

NOTICE OF FILING

Details of Filing

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File Number: NSD176/2023
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
TERRACOM LIMITED ACN 143 533 537 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Statement Of Claim

Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD176/2023

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

TERRACOM LIMITED (ACN 143 533 537) and others according to the schedule

Respondents

PARTIES

1. The plaintiff (ASIC):
 - (a) is a body corporate established by s 7 of the *Australian Securities and Investments Commission Act 1989* (Cth) and continued in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**the ASIC Act**); and
 - (b) is entitled to sue in its corporate name under s 8(1)(d) of the ASIC Act.
2. The first defendant, TerraCom Limited ACN 143 533 537 (**TerraCom**):
 - (a) is a body corporate registered under the *Corporations Act 2001* (Cth) (**the Corporations Act**) and capable of being sued;
 - (b) is and was at all material times an Australian company, the issued shares of which are and were listed on the Australian Securities Exchange, operated by Australian Securities Exchange Ltd (**ASX**);
 - (c) in 2020, had a market capitalisation of around \$100 million;
 - (d) is and was at all material times the owner of the Blair Athol thermal coal mine in Queensland; and

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- (e) from about 20 May 2010, owned all of the shares in its subsidiary, Orion Mining Pty Ltd (**Orion**).
3. The second defendant, Daniel McCarthy (**McCarthy**) was:
- (a) between December 2018 and March 2021, the Chief Executive Officer of TerraCom;
 - (b) from 18 April 2019, a director of Orion; and
 - (c) from 1 April 2021, a director of TerraCom.
4. The third defendant, Nathan Reece Timothy Boom (**Boom**) was:
- (a) between March 2017 and August 2020, the Chief Financial Officer of TerraCom;
 - (b) from 31 December 2018, a director of Orion;
 - (c) from 14 January 2016 to 30 March 2020, the company secretary of Orion; and
 - (d) from 15 January 2016 to 14 November 2019, the company secretary of TerraCom.
5. The fourth defendant, Craig Anthony Ransley (**Ransley**):
- (a) was the founder of TerraCom;
 - (b) was between 23 April 2009 to 27 February 2013, a director of Orion;
 - (c) was between 7 May 2010 and 7 May 2013, a director of TerraCom;
 - (d) was between 19 November 2014 and 29 April 2015, a director of TerraCom;
 - (e) from at least January 2018 regularly attended meetings of TerraCom's board of directors;
 - (f) was from at least January 2018 to about 21 February 2020, an adviser to TerraCom's board of directors; and
 - (g) from about 21 February 2020 to about 8 July 2022, a director of TerraCom and Deputy Chairman of TerraCom's Board.
6. The fifth defendant, Wallace Macarthur King (**King**) was:
- (a) from about 17 May 2017 to about 31 March 2021, a director of TerraCom; and
 - (b) from about September 2017 to about 31 March 2021, the Chairman of TerraCom's board of directors.

FACTUAL BACKGROUND

Coal sales

7. On 7 November 2016, TerraCom released an announcement to the ASX in which it informed the market that:
- (a) TerraCom had, through its wholly owned subsidiary Orion, reached agreement to acquire the Blair Athol Coal Mine in Queensland (**Blair Athol**), subject to certain conditions precedent;
 - (b) forecast that it would produce approximately 2Mt per annum for the next seven years; and
 - (c) on current pricing for Blair Athol quality coal, over \$133 million would flow to the Queensland Government in royalties over the seven years projected mine life.

Particulars

TerraCom's ASX Release 'Blair Athol Mine Life Extension' dated 7 November 2016 [TER.0003.0003.0007].

8. On or around 13 September 2016, Orion and Noble Resources International Pte Ltd (**Noble**) had entered into an agreement pursuant to which:
- (a) Orion nominated Noble as its sole and exclusive sales and marketing agent in respect of coal from Blair Athol; and
 - (b) Orion agreed to pay Noble a marketing fee based on a percentage of final invoiced gross sales price.

Particulars

Coal Sale and Marketing Agreement between Noble and Orion dated 13 September 2016 [TRL.0001.0007.1611] as amended on or around 20 December 2018 [TRL.0001.0007.1637].

9. On or about 31 May 2017, TerraCom released an announcement to the ASX in which it informed the market that:
- (a) Orion had successfully completed the acquisition of Blair Athol; and
 - (b) the current forecast was to produce 1.9Mt of product in the first full year from commencement of coal mining.

Particulars

TerraCom's ASX Release 'Completion of Blair Athol Acquisition' dated 31 May 2017 [TER.0003.0003.0151].

10. The quality of the coal from Blair Athol was, and is, measured by a number of parameters one of which was, and is, net calorific value on an 'as received' basis (**NCV**).

11. One variable in determining NCV was, and is, “total moisture”, being the total amount of moisture (expressed as a percentage) present in the coal at the time of testing, including surface moisture.
12. From at least March 2019, TerraCom, McCarthy, Boom, Ransley and King were each aware that there were several factors affecting the quality of coal being mined at Blair Athol, including that:
 - (a) most coal mined in the future would be near or under the water table;
 - (b) the energy levels of the coal were slowly declining;
 - (c) the moisture content of the coal was slowly increasing;
 - (d) the ash levels of the coal were slowly increasing; and
 - (e) moisture was being added to the coal at the loading port.

Particulars

Email from King to Ransley, Boom and McCarthy dated 28 March 2019 [TRC.0002.0094.2470]. Email from McCarthy to King, Ransley and Boom dated 15 April 2019 [TRC.0002.0127.6956]. Email from Tony Garmeister to McCarthy dated 19 November 2018 [TRL.0001.0003.1502].

13. At all relevant times, the coal sale contracts entered into by TerraCom or Orion (**Coal Sales Agreements**) with end customers (either directly, or indirectly through Noble as its sales agent) included conditions as to the quality of coal to be supplied, with such terms and conditions typically including that:
 - (a) the price for the coal payable under the contract was to be calculated referable to an identified formula, which included the NCV;
 - (b) an independent laboratory would sample the coal at the loading port and analyse that sample (known as the outbound testing) in accordance with a specified set of standards;
 - (c) either the independent laboratory or TerraCom would retain, or cause to be retained, an “umpire sample” (**Umpire Sample**) to be made available for a specific period for testing should the end customer query the quality of the coal;
 - (d) the quality of coal provided under the contract would be as determined by a certificate issued by the independent laboratory based on the outbound testing (**Certificate of Analysis**); and
 - (e) that, in the event that the NCV of the coal did not meet the level specified in the contract:
 - (i) a specified pricing reduction could be applied; or
 - (ii) the customer was entitled to reject the shipment of coal.

14. In the period between May 2018 and January 2020, the independent laboratory appointed in relation to the majority of shipments of coal from Blair Athol was ALS Limited or its subsidiaries (together **ALS**).

Particulars

See shipments listed at Schedule 2 in relation to which ALS was appointed as the independent laboratory.

15. The primary point of contact from ALS in relation to the TerraCom relationship was Kerie Miller (**Miller**), a business development manager.
16. The person at TerraCom with primary responsibility for dealing with ALS in relation to shipping analysis reports and Certificates of Analysis was:
- (a) at all material times until around July 2019, the General Manager Marketing for TerraCom, Tony Garmeister (**Garmeister**);
 - (b) from around July 2019 until 13 August 2019, Justin Williams (**Williams**); and
 - (c) on and from 13 August 2019, McCarthy.
17. One of the roles and responsibilities of McCarthy, Boom and Garmeister and Williams was to seek to ensure that the coal produced by the Blair Athol mine met the specifications under the Coal Sales Agreement, including as to total moisture and NCV.
18. Records held by TerraCom between May 2018 to January 2020 showed the following in relation to TerraCom's coal shipments for the period May 2018 to January 2020:
- (a) TerraCom received from ALS the shipping analysis reports (**Shipping Analysis Report**) listed in Column 5 of Schedule 2 to this Statement of Claim on or around dates listed in Column 3 of Schedule 2 which showed the results of ALS' coal quality testing for a particular shipment including the NCV results listed in Column 4 of Schedule 2;
 - (b) on or around the dates listed in Column 7 of Schedule 2, TerraCom and ALS communicated about the coal quality results shown on the Shipping Analysis Reports;
 - (c) on or around the dates listed in Column 9 of Schedule 2, TerraCom received from ALS the Certificates of Analysis listed in Column 11 of Schedule 2 showing the NCV results listed in Column 10 of Schedule 2;
 - (d) for each shipment listed in Schedule 2, the NCV shown in Column 10 was greater than that shown in Column 4 and more favourable for TerraCom; and
 - (e) on or around the dates listed in Column 12 of Schedule 2, TerraCom issued the final commercial invoice to a customer listed in Column 13 of Schedule 2, which invoice recorded the amount owing based on the NCV listed in Column 10 of Schedule 2.

19. Additional, records held by ALS between September 2019 and January 2020 showed, in relation to TerraCom's coal shipments for the period September 2019 to January 2020, that ALS created the Shipping Analysis Reports listed in Column 6 of Schedule 2 on or around dates listed in Column 3 of Schedule 2 with the coal quality testing results including the NCV results listed in Column 4 of Schedule 2.

Disclosure Committee and ASX

20. In the period from February to April 2020:
- (a) the members of TerraCom's Disclosure Committee were McCarthy, Boom, Ransley and King;
 - (b) Megan Etccl was the Company Secretary of TerraCom;
 - (c) in respect of potential ASX announcements, it was TerraCom's practice for Megan Etccl to send any draft ASX announcement to each member of the Disclosure Committee prior to the release of that announcement;
 - (d) the Disclosure Committee was responsible for authorising the release of any ASX announcement;
 - (e) the Disclosure Committee was responsible for the accuracy of any ASX announcement; and
 - (f) as members of the Disclosure Committee, each of McCarthy, Boom, Ransley and King had the ability to amend, approve, object to and/or prohibit the release of any ASX announcement.
21. In the period from February to April 2020, the Australian Securities Exchange Ltd was an operator of a financial market within the meaning of section 1309(2)(c) of the Corporations Act.

Williams and the Whistleblower Allegations

22. At some point in early to mid-2019:
- (a) Garmeister tendered his resignation or indicated an intention to resign; and
 - (b) thereafter, TerraCom started recruiting for the role of General Manager Commercial.
23. The role of General Manager Commercial included the roles and responsibilities that had previously been exercised by Garmeister as General Manager Marketing.
24. On 18 and 19 June 2019, TerraCom, McCarthy, Ransley, Boom and King approved a budget and strategy that acknowledged the departure of Garmeister and the need to hire a replacement for Garmeister.

Particulars

Planning and Board Meeting held in Singapore: [TER.1012.0001.0004, TER.1022.0001.0019, TRC.0002.0128.4518, TRC.0002.0128.4556, TRC.0002.0128.4599].

25. On or about 9 July 2019, Williams commenced employment with TerraCom in the position of General Manager Commercial.
26. On or around 26 July 2019, Garmeister's employment with TerraCom ended.
27. At various times in July and August 2019, Williams informed McCarthy and Boom that:
 - (a) Williams was concerned about a practice he had observed between TerraCom and ALS;
 - (b) the practice referred to in subparagraph (a) above included:
 - (i) coal quality results recorded in the Shipping Analysis Report for particular shipments of coal were amended without proper justification by ALS to record and report results more favourable to TerraCom in the Certificate of Analysis with respect of the same shipment; and
 - (ii) the Certificates of Analysis with the amended results were issued to customers and used to invoice those customers.

Particulars

Williams conveyed the substance of the pleaded allegations orally in person with McCarthy, and also with McCarthy and Boom, in a series of conversations at the Blair Athol Mine office, the Blair Athol Mine site and the W Hotel in Brisbane.

28. In August 2019, Williams was responsible for overseeing and liaising with ALS in relation to the Certificate of Analysis for a coal shipment referable to a ship named Wooyang Banders.
29. On 8 August 2019 at 12:40 pm AEST:
 - (a) the Certificate of Analysis for the Wooyang Banders shipment was provided to various recipients including McCarthy, Boom and Williams; and
 - (b) the coal quality results recorded in the Certificate of Analysis had not been amended by ALS from the results shown in the Shipping Analysis Report to record and report more favourable results to TerraCom.

Particulars

Email from Kurt Hultzsich to various Noble email addresses and copied to Boom, McCarthy, Williams and others dated 8 August 2019 attaching 'BA0109 Noble Saleable Coal Wooyang Banders-signed.pdf' and 'BA0109 WOORYANG BANDERS BATA - Certs_Signature.pdf' [TER.2000.0001.8515, TER.2000.0002.6510, TER.2000.0002.6515].

30. Following receipt of the Certificate of Analysis pleaded at paragraph 29:

- (a) on 8 August 2019 at 2:19 pm AEST, Boom emailed McCarthy stating: '[w]as this spec targeted mate?';

Particulars

Email from Boom to McCarthy dated 8 August 2019 attaching 'BA0109 Noble Saleable Coal Wooyang Banders-signed.pdf' and 'BA0109 WOoyang BANDERS BATA - Certs_Signature.pdf' [TRL.0001.0007.5899, TRL.0001.0007.5900, TRL.0001.0007.5905].

- (b) on 8 August 2019 at 2:21 pm AEST, McCarthy emailed Boom stating '[a]bsolutely not and when I spoke to Justin a day or so ago he told me it wasn't at this level';

Particulars

Email from McCarthy to Boom dated 8 August 2019 [TRL.0001.0007.5911].

- (c) on 9 August 2019, McCarthy emailed a recruitment agency, copying in Boom, requesting assistance to replace the role of General Manager Commercial Corporate and stating: '[w]e recently recruited and filled the attached role, it isn't working out and we will be putting him to sleep'; and

Particulars

Email from McCarthy to Chris Norris copied to Boom dated 9 August 2019 [TRL.0001.0007.6304].

- (d) on 9 August at 12:45 pm AEST, Boom responded to the email pleaded at paragraph 29 stating that: '[t]o say I was stunned when I opened up these certificates would be an under statement' and requesting 'a discussion on this on Monday's call with a full explanation of what actually happened to this cargo'.

Particulars

Email from Boom to Williams, Shaun Lucas and Matt Harrison copied to McCarthy dated 9 August 2019 and attaching 'BA0109 WOoyang BANDERS BATA - Certs_Signature.pdf' [TER.2000.0001.7578, TER.2000.0002.0412].

31. On 13 August 2019 at or around 8:30 am, McCarthy and Boom met with Williams at the W Hotel in Brisbane at which time:
- (a) McCarthy stated that Williams was being terminated as part of a reduction in high overheads;
 - (b) Williams stated that he did not accept that explanation and that he considered he was being terminated because of the issues he had raised about TerraCom's practices;
 - (c) Williams said he had evidence of TerraCom's illegal activity; and
 - (d) McCarthy sought to forcibly grab Williams' laptop bag.

32. On 13 August 2019 at 5:16 pm AEST, McCarthy emailed Williams attaching a letter terminating his employment citing 'cost pressures in the business and our inability to accommodate high costs overheads' and that '[a] restructure is underway resulting in several positions being removed'.

Particulars

Email from McCarthy to Williams dated 13 August 2019 attaching '656821451_1_Letter from TerraCom to Justin Williams (issued).pdf' [TRL.0001.0007.6981, TRL.0001.0007.6982].

33. In the circumstances pleaded at paragraphs 31 and 32, TerraCom terminated Williams' employment with TerraCom on 13 August 2019.
34. On 13 August 2019 at 9:28 am, Williams requested a meeting with Ransley to discuss his termination from TerraCom and stated that he believed his termination was as a result of the issues he had raised while employed at TerraCom.

Particulars

Message from Williams to Ransley dated 13 August 2019 at 9:28 am [TER.1004.0003.0012].

35. On or around 14 August 2019, King authorised Ransley to meet with Williams as an agent of TerraCom's board of directors.

Particulars

By way of a message from Ransley to Williams at 10:02 am on 14 August 2019 [TER.1004.0003.0012] and at the meeting of 14 August 2019 pleaded at paragraph 36, Ransley stated to Williams that he was meeting with Williams on behalf of the Chairman of the Board, King. He also stated at the meeting of 14 August 2019 pleaded at paragraph 36 that he had also spoken to McCarthy and Boom to obtain their side of the story. The authorisation is otherwise implied from the circumstances of Ransley speaking with McCarthy, Boom, King and Williams and liaising with PwC in relation to the preparation of an investigation into the allegations.

36. On 14 August 2019 at or about 1 pm, Ransley met Williams at the W Hotel in Brisbane at which time:
- (a) Williams made the statements pleaded in paragraph 27 in relation to TerraCom's improper alteration of coal certificates;
 - (b) Williams stated that the practice, as detailed in subparagraph 27(b) above, had been engaged in by Garmeister with the knowledge of McCarthy and Boom;
 - (c) Williams said he did not want to make a big deal about the matter and wanted to continue to work as he believed Blair Athol to be a valuable project and the practice being engaged in was harmful to TerraCom;
 - (d) Williams provided to Ransley a bundle of documents which he said supported his allegations and provided an explanation of how they related to his allegations;

- (e) Ransley said that the termination had nothing to do with the issues Williams was raising as to TerraCom's practices;
- (f) Ransley said that 4 weeks beforehand, the Board had given management a clear direction to reduce overheads and Williams was one of several overheads that had been reduced;
- (g) Ransley said that the Board and King had decided to engage an independent party to investigate the allegations that Williams had made;
- (h) Ransley said that he would discuss Williams' termination and his request to remain employed with King and that it would be a matter for King whether he wanted to counter what McCarthy had done;
- (i) Ransley asked when Williams would be returning his laptop and said that King had asked him to ask Williams to return Williams' work laptop;
- (j) Ransley said that King had made clear that if the laptop was not returned the police would be on Williams' doorstep to get the laptop back; and
- (k) Williams said that he would be taking the laptop to the Federal Police because it concerned federal offences.

Particulars

The representations pleaded above were all oral. Bundle of documents provided by Williams to Ransley on 14 August 2019. [TER.1029.0002.8840, TER.1029.0002.8858, TER.1029.0002.8856, TER.1029.0002.8846].

- 37. The documents provided by Williams to Ransley on 14 August 2019 (as pleaded in paragraph 36(d) above) included a Shipping Analysis Report, Certificate of Analysis and TerraCom invoice to customer for the shipments identified in Schedule 2 where Column 1 is marked 'R'.
- 38. On or around the time of his termination, Williams disclosed to the Australian Federal Police one or more of the matters pleaded in paragraphs 27 and 36 above in relation to TerraCom's improper alteration of coal certificates.
- 39. On 3 September 2019, Williams commenced legal proceedings against TerraCom in the Fair Work Commission in relation to his dismissal from TerraCom.

Particulars

Form F8 - General Protections Application Involving Dismissal dated 3 September 2019 [TRL.0001.0008.1601]. Fair Work Commission Lodgment details dated 3 September 2019 [TRL.0001.0008.1600]. Letter from Fair Work Commission to McCarthy dated 5 September 2019 [TRL.0001.0008.1576].

- 40. In December 2019, Williams commenced proceedings in the Federal Circuit Court against various TerraCom directors and officers (**Federal Circuit Court Proceeding**).

Particulars

Application - Fair Work Division dated 3 December 2019 and filed on 5 December 2019 in proceeding number SYG3192/2019 [TER.1000.0003.0175].
Application - Dismissal from employment in contravention of a general protection: Form 2 dated 3 December 2019 and filed on 5 December 2019 in proceeding number SYG3192/2019 [TER.1000.0003.0181].

41. In his application filed with the Federal Circuit Court, Williams included a table (**Williams Table**) showing:
- (a) details for 14 shipments of coal produced and sold by TerraCom; and
 - (b) identifying two different NCV values for each of the 14 shipments as recorded in business records held by TerraCom.

Particulars

Application - Dismissal from employment in contravention of a general protection: Form 2 dated 3 December 2019 and filed on 5 December 2019 in proceeding number SYG3192/2019 at page 11 [TER.1000.0003.0181].

42. The 14 shipments identified in the Williams Table were those listed in Schedule 2 where Column 1 is marked 'W'.
43. On or around 12 February 2020, Williams disclosed to ASIC the matters pleaded in paragraphs 27 and 36 above.
44. In the remainder of this Statement of Claim the term '**Whistleblower Allegations**' is a reference to:
- (a) the allegations made by Williams as referred to in subparagraphs 27(a) and (b) above and the matters pleaded in paragraph 36 above; and
 - (b) alternatively, the matters pleaded in subparagraphs 36(b)-(k) above.

Project Rex and the PwC Report

45. On or around 14 August 2019, TerraCom, Ransley and King agreed that TerraCom needed to appoint an independent party to investigate the Whistleblower Allegations.

Particulars

The agreement was at least one reached orally. To the extent the agreement was in writing, which is a matter presently not known, particulars will be provided after discovery has been provided.

46. On 29 August 2019, TerraCom's solicitors at the time, Ashurst, engaged PricewaterhouseCoopers (**PwC**) on the instructions of TerraCom, Ransley and/or King to investigate, amongst other things, the Whistleblower Allegations, being an investigation referred to as Project Rex (**Project Rex**).

Particulars

Email from Melanie Wong (Ashurst) to Mark Rigby (PwC) and Patrick Millwood (PwC) dated 29 August 2019 attaching, amongst others, '657073866_1_Project Rex - Brief to PwC - 29 August 2019.PDF' [PWC.1000.0001.0395, PWC.1000.0001.0396].

47. On 7 October 2019, PwC delivered a draft report on Project Rex to Ashurst (**First Draft PwC Report**).

Particulars

Email from Mark Rigby to James Clarke dated 7 October 2019 attaching 'Privileged and confidential - Project Rex - Draft report (07102019).pdf' [PWC.1000.0001.1815, PWC.1000.0001.1816].

48. On 10 October 2019, PwC delivered an updated draft report on Project Rex to Ashurst (**Second Draft PwC Report**).

Particulars

Email from Patrick Millwood to James Clarke dated 10 October 2019 attaching, amongst others, 'Privileged and confidential - Project Rex - Draft report (10 October 2019).pdf' [PWC.1000.0001.1992, PWC.1000.0001.1996].

49. Following the delivery of the Second Draft PwC Report, PwC requested and/or received instructions from Ashurst acting on the instructions of TerraCom, Ransley and/or King to:
- (a) review email data for McCarthy, Boom and the General Manager - Coal Sales and Marketing from 1 January 2018 to 10 October 2019 using an agreed list of search terms;
 - (b) conduct further interviews with McCarthy and Boom;
 - (c) conduct an interview with Tony Garmeister in accordance with an agenda approved by TerraCom;
 - (d) in respect of a PwC-selected sample of transactions, obtain copies of and review the invoice issued to the customer, Certificate(s) of Analysis and Shipping Analysis Report(s) for each transaction; and
 - (e) quantify any inconsistencies in NCV identified between original Shipping Analysis Reports and final Certificates of Analysis.

Particulars

Email from Patrick Millwood to James Clarke dated 10 October 2019 attaching, amongst others, 'Privileged and confidential - Project Rex - Draft report (10 October 2019).pdf' [PWC.1000.0001.1992, PWC.1000.0001.1995]. Email from Patrick Millwood to Melanie Wong dated 15 October 2015 attaching '(REX0036) Sales Register - January 2018 to September 2019 - Selections.xlsx' [PWC.1000.0001.2027, PWC.1000.0001.2030]. Email from Patrick Millwood to Melanie Wong dated 14 November 2019 [PWC.1000.0001.2288]. Email from Patrick Millwood to Melanie Wong dated 14 November 2019 [PWC.1000.0001.2283]. Email from Melanie Wong to Patrick Millwood dated 14

November 2019 [PWC.1000.0001.2301]. Document entitled 'Meeting with Danny McCarthy (CEO)' dated 15 November 2019 [PWC.1000.0002.1164]. Document entitled 'Meeting with Nathan Boom (CFO)' dated 15 November 2019 [PWC.1000.0002.1235]. Email from Melanie Wong to Patrick Millwood dated 20 November 2019 [PWC.1000.0001.2384]. Email from Melanie Wong to Patrick Millwood dated 21 November 2019 [PWC.1000.0001.3176].

50. On 19 November 2019, Ashurst informed PwC, acting on the instructions of TerraCom, Ransley and/or King, that:
- (a) Garmeister declined to participate in an interview with PwC; and
 - (b) TerraCom declined a request from PwC for PwC to interview a representative from ALS about the coal quality testing process.

Particulars

Email from Melanie Wong to Patrick Millwood and Mark Rigby dated 19 November 2019 [PWC.1000.0001.2382].

51. On 2 December 2019, PwC provided a further updated draft report on Project Rex to TerraCom (**Third Draft PwC Report**).

Particulars

Email from Mark Rigby to Philip Forrest dated 2 December 2019 attaching 'Privileged and confidential - Project Rex - Draft Report (01122109).pdf' [PWC.1000.0001.3331, PWC.1000.0001.3332].

52. On 16 December 2019, PwC delivered its final report to TerraCom (**PwC Report**).

Particulars

Email from Mark Rigby to Philip Forrest dated 2019 attaching 'Privileged and confidential - Project Rex - Report (16122019).pdf' [PWC.1000.0001.3501, PWC.1000.0001.3502].

53. The PwC Report stated, relevantly, that:
- (a) its investigation methodology was limited and no contact was made with ALS or its employees or officers;
 - (b) by reference to a sample review of documents, there were inconsistencies in reported NCV between Shipping Analysis Reports and the commercial invoices issued to customers, similar to the pattern of inconsistencies identified by Williams but that 'the underlying reason for these inconsistencies could not be determined from the correspondence reviewed or through discussions with TerraCom';
 - (c) TerraCom had advised PwC that coal sampling measurements at different points can vary, but had provided no other information regarding why there were differences in NCV between documents dated the same day and issued, in some cases, a few hours apart;

- (d) of 14 shipments reviewed, 12 showed inconsistencies between the value of the NCV stated on the initial Shipping Analysis Report and the subsequent Certificate of Analysis or commercial invoice, and all 12 inconsistencies were favourable to TerraCom;
- (e) the total value of the 12 shipments for which inconsistencies had been identified was approximately \$81 million and recalculation based on the earlier Shipping Analysis Reports demonstrated that the increase in the NCV in the later Certificates of Analysis gave rise to an increase in invoice value of \$1,151,409 over those 12 shipments alone;
- (f) in FY2019, four shipments totalling approximately \$27 million (representing 8% of TerraCom's annual revenue) would have been liable for rejection by TerraCom's customer under the applicable contractual terms had they been certified at the lower NCV levels shown on the initial (unaltered) Shipping Analysis Reports;
- (g) there was evidence to indicate that there were discussions between TerraCom and ALS between the time of the issue of the initial Shipping Analysis Reports and the subsequent issue of the final Certificates of Analysis; and
- (h) review of 'email communications' between McCarthy, Boom and relevant third parties such as ALS, 'using targeted search terms did not identify any indications' that McCarthy was responsible for any potential misstatement of coal quality and that correspondence with respect to coal testing and related practices reviewed was primarily between Garmeister and ALS and 'typically did not involve Mr McCarthy'.

54. The 12 shipments which PwC identified as showing inconsistencies between the value of the NCV stated on the initial Shipping Analysis Report and the subsequent Certificate of Analysis or commercial invoice:

- (a) are those in Schedule 2 where Column 1 is marked 'P'; and
- (b) aligned with certain shipments identified by Williams as pleaded above at paragraph 42.

55. The PwC Report did not:

- (a) reject all of the Whistleblower Allegations;
- (b) find that the Whistleblower Allegations were "unfounded";
- (c) exclude any involvement by TerraCom, McCarthy or Boom and/or any employees or officers of TerraCom in the conduct the subject of the Whistleblower Allegations;
- (d) reject the allegation of TerraCom, McCarthy or Boom and/or any employees or officers of TerraCom's involvement in the alteration of coal quality certificates;

(together with the matters referred to in paragraphs 52 and 53 above, the **PwC Findings**).

56. The PwC Report also stated that:

- (a) the concerns raised by Williams referred to a pattern of inconsistencies in NCV between internal Shipping Analysis Reports and the commercial invoices issued to customers, which Williams attributed to improper alteration at the instance or request of TerraCom;
- (b) PwC identified similar inconsistencies, in TerraCom's favour, in relation to 10 further shipments and that the underlying reason for these inconsistencies could not be determined; and
- (c) further consideration could be given to inviting a representative from ALS who is responsible for testing TerraCom coal to discuss the PwC Findings,

(together the **PwC Matters for Inquiry**).

Circulation of PwC Report

57. On 16 December 2019, Ransley received a copy of the PwC Report.

Particulars

Email from Forrest to Ransley dated 16 December 2019 attaching 'Privileged and confidential - Project Rex - Report (16122019).pdf' [TRL.0001.0009.6545].

58. On 13 January 2020, Boom received a copy of the PwC Report.

Particulars

Email from Forrest to Boom dated 13 January 2020 attaching 'Privileged and confidential - Project Rex - Report (16122019).pdf' [TRL.0001.0009.8601].

59. On 20 January 2020, McCarthy received a copy of the PwC Report.

Particulars

Email from Boom to McCarthy sent via Microsoft Sharepoint dated 20 January 2020 providing Microsoft Sharepoint link to access the PwC Report [TER.1023.0002.0004].

60. On 20 January 2020, King received a copy of the PwC Report.

Particulars

Email from Boom to King sent via Microsoft Sharepoint dated 20 January 2020 providing Microsoft Sharepoint link to access the PwC Report [TER.1022.0003.0006].

THE FEBRUARY ANNOUNCEMENT

The formal engagement of Teneo, AFR Article and ALS Announcement

61. On 3 February 2020, Boom forwarded to Ashurst, Ransley and King an inquiry from *The Australian Financial Review* (**AFR**) about the Whistleblower Allegations.

Particulars

Email from Boom to Vince Rogers, Tamara Lutvey, King and Ransley dated 3 February 2020 [TRC.0002.0131.2564].

62. On or around 12 February 2020, TerraCom, Boom, Ransley and/or King engaged Teneo Strategy Australia Pty Ltd (**Teneo**) to assist TerraCom with investor relations, corporate positioning and media relations.

Particulars

Letter from John Hurst of Teneo to King dated 11 October 2019 [TRC.0002.0131.3316]. Email from Boom to Hurst copied to Ransley and King dated 12 February 2020 [TRC.0002.0131.4365].

63. On 24 February 2020, ALS issued a release to the ASX (the **February ALS Announcement**) stating that inter alia:
- (a) ALS had appointed external advisers to conduct an independent investigation into the processes that applied to the certification of coal samples;
 - (b) preliminary investigations had identified that a number of certificates of analysis issued from two laboratories were amended before issue without proper justification; and
 - (c) four staff members of the coal superintending unit had been suspended pending the outcome of the ongoing investigation.

Particulars

ALS Limited ASX announcement dated 24 February 2020 titled 'ALS Coal Australian Superintending and Certification unit' [TRC.0002.0131.5604].

64. On 24 February 2020, the AFR published an article with the headline 'Fraud, bribery claims rock coal mining' (**February AFR Article**).

Particulars

Australian Financial Review Article dated 24 February 2020 with headline 'Fraud, bribery claims rock coal mining' [TRL.0001.0010.3975].

65. The February AFR Article:
- (a) referred to the February ALS Announcement;
 - (b) stated that Williams had made allegations that:
 - (i) TerraCom had been involved in a scheme to improve coal analysis results; and
 - (ii) TerraCom and Noble were involved in bribery with Chinese and Korean shipments.

66. On 24 February 2020 at 11:47 am AEDT, Boom, Ransley and King each received an email from Hurst, attaching the February ALS Announcement, accompanied by commentary that it had been lodged with the ASX that morning and that the AFR were drawing links with Williams.

Particulars

Email from Hurst to King, Ransley and Boom dated 24 February 2020 attaching 'ALSstatement44fcn18zpfpc1g.pdf' [TRC.0002.0131.5603, TRC.0002.0131.5604].

The February Announcement

67. On the afternoon of 24 February 2020, TerraCom lodged with the ASX an announcement concerning the Whistleblower Allegations and the February AFR Article (the **February Announcement**), which stated that:
- (a) TerraCom categorically denied the allegations made by Williams;
 - (b) Williams was made redundant in August 2019;
 - (c) Williams first alleged that TerraCom altered reports about the quality of its coal exports subsequent to his redundancy;
 - (d) Williams' allegations were false;
 - (e) TerraCom had the matter independently investigated;
 - (f) TerraCom believed that the allegations made by Williams were totally unfounded; and
 - (g) the February Announcement was approved by TerraCom's Disclosure Committee.

Particulars

ASX lodgement records showing announcement 'Australian Financial Review Article' received by the ASX from Megan Etccl on 24 February 2020 at 4:04 pm [TER.1041.0001.0009]. ASX confirmation of release email dated 24 February 2020 attaching TerraCom ASX Announcement dated 24 February 2020 titled 'Australian Financial Review Article' [TRL.0001.0010.4024, TRL.0001.0010.4025].

Involvement of McCarthy, Boom, Ransley and King in the February Announcement

68. Prior to, and at the time of, the release of the February Announcement to the ASX, each of McCarthy, Boom, Ransley and /or King:
- (a) was aware of the AFR Article;
 - (b) was aware of the February ALS Announcement; and
 - (c) had discussed, with one or more of the others, the proposed content of the February Announcement.

Particulars

The existence of the discussions is to be inferred from the matters pleaded in paragraphs 69 and 70 below and the particulars thereto.

69. On 24 February 2020, drafts of the February Announcement and comments on those drafts were circulated between Hurst, Boom, Ransley and King.

Particulars

Email from Hurst to Ransley, King and Boom dated 24 February 2020 attaching 'RevisedASXstatement.docx' [TRC.0002.0131.5633, TRC.0002.0131.5634]. Email from Ransley to Hurst copied to King and Boom dated 24 February 2020 [TRC.0002.0131.5641]. Email from Hurst to Ransley, copied to King and Boom dated 24 February 2020 attaching 'RevisedASXstatement.docx' [TRC.0002.0131.5650, TRC.0002.0131.5652].

70. On 24 February 2020 at 3:45 pm AEDT, Megan Etcell (**Etcell**), TerraCom's company secretary, emailed McCarthy, Boom, Ransley and King:
- (a) attaching a copy of the February Announcement; and
 - (b) stating that the February Announcement was to be released that afternoon.

Particulars

Email from Etcell to King, Ransley, McCarthy and Boom dated 24 February 2020 attaching '24-02-04 ASC Announcement - Australian Financial Review Article.pdf' and '24-02-04 ASX Announcement - Australian Financial Review Article.docx' [TRC.0002.0131.5706, TRC.0002.0131.5707, TRC.0002.0131.5709].

71. In the premises, the February Announcement was given to the ASX with the knowledge, agreement and/or acquiescence of McCarthy, Boom, Ransley and King.

Particulars

ASIC relies on the matters pleaded in paragraphs 20, 62, 67(g) and 68 to 70 above.

72. In the premises, each of McCarthy, Boom, Ransley and King authorised or permitted the making available or the giving of the February Announcement to the ASX.

THE PROPOSED MARCH ANNOUNCEMENT

Customer complaints

KOEN

73. Between December 2018 and 2 April 2020, Korea South-East Power Company (**KOEN**) was:
- (a) a purchaser of TerraCom's coal; and
 - (b) further or alternatively, a customer, or end customer, of TerraCom.

74. On 16 August 2019, KOEN notified Noble of a 'huge gap' between loading port and discharging port analysis results for the Hyundai Samcheonpo with bill of lading date 3 May 2019.

Particulars

Email from 'Cobra' to Daniel Hunt and Hank Yang (Noble) and copied to others dated 16 August 2019 and attaching letter from Yeonjun Na (General Manager, Fuel Procurement Team, KOEN) to Vu Tran (Noble) dated 16 August 2019 [NBL.0002.0001.2893, NBL.0002.0001.2894].

75. The Hyundai Samcheonpo shipment identified in KOEN's letter of 16 August 2019 is that shipment listed in Schedule 2 where Column 1 is marked 'K'.
76. On a date presently unknown but before 9 March 2020, 10 March 2020 or 2 April 2020, TerraCom became aware, or ought to have become aware, that KOEN had raised the discrepancy between the loading port and discharging port analysis results for the Hyundai Samcheonpo.

JERA

77. Between July 2018 and 2 April 2020, JERA Global Markets Pte Ltd, formerly known as JERA Trading Pte Ltd, (**JERA**) was:
- (a) a purchaser of TerraCom's coal; and
 - (b) further or alternatively, a customer, or end customer, of TerraCom.
78. On 28 February 2020, JERA wrote to TerraCom asking:
- (a) for the Umpire Samples taken for three cargoes with bill of lading dates 30 November 2019, 25 December 2019, and 6 February 2020 to be tested by Bureau Veritas;
 - (b) TerraCom to advise whether it was aware of any Certificates of Analysis for cargoes delivered under TerraCom's agreement with JERA that may have been amended without proper justification; and
 - (c) for the details of TerraCom's investigations to be shared in relation to such cargoes.

Particulars

Email from Paul Marshall (Coal Book Manager, JERA) to Boom and copied to others attaching letter from Hisaki Endo (Managing Director of Group Coordination, JERA) dated 28 February 2020 [TER.1030.0005.0019, TER.1030.0005.0020].

79. On 1 March 2020, Boom forwarded JERA's email and letter to Ransley, copying McCarthy.

Particulars

Email from Boom to Ransley and copied to McCarthy dated 1 March 2020 attaching letter from Hisaki Endo (Managing Director of Group Coordination, JERA) dated 28 February 2020 [TER.1030.0005.0009, TER.1030.0005.0010].

80. On 1 March 2020, Boom responded to JERA's 28 February 2020 letter:

- (a) agreeing to have Umpire Samples for three shipments tested by Bureau Veritas as requested by JERA; and
- (b) referring JERA to the February Announcement.

Particulars

Email from Boom to Paul Marshall (Coal Book Manager, JERA) copied to McCarthy and others dated 1 March 2020 [TER.1030.0005.0022].

81. Boom's response to JERA dated 1 March 2020 did not respond to JERA's requests referred to at paragraphs 78(b) and 78(c) above.

EWP

82. Between October 2019 and 2 April 2020, Korean East-West Power Co (**EWP**) was:

- (a) a purchaser of TerraCom's coal;
- (b) further or alternatively, a customer, or end customer, of TerraCom.

83. On or around 23 December 2019, Orion issued to Noble:

- (a) an invoice to Noble dated 23 December 2019 in respect of coal shipped on the vessel MV Sakizaya Leader for a total of USD4,130,304.29 based on an NCV of 5,477 kcal/kg; and

Particulars

Invoice BA0128 issued by Orion to Noble dated 23 December 2019 enclosing Certificate of Analysis issued by ALS dated 23 December 2019 [TER.1025.0001.0045].

- (b) a Certificate of Analysis issued by ALS which reported an NCV of 5,477 kcal/kg.

Particulars

Invoice BA0128 issued by Orion to Noble dated 23 December 2019 enclosing Certificate of Analysis issued by ALS dated 23 December 2019 [TER.1025.0001.0045].

84. On 24 December 2019, Noble sent to EWP:

- (a) the Certificate of Analysis referred to subparagraph 83(b) above; and
- (b) an invoice in respect of coal shipped on the MV Sakizaya Leader for a total of USD4,130,304.29 based on an NCV of 5,477 kcal/kg.

Particulars

Email from Lisa Thomas (Noble) to blossom@ewp.co.kr and others dated 24 December 2019 attaching '24122019083529-0001.pdf' [NBL.0014.0001.1396, NBL.0014.0001.1397].

85. On 12 March 2020, EWP wrote to Noble stating that:

- (a) it had found a quality discrepancy between the NCV shown on the Certificate of Analysis and its own analysis based on the buyer sample; and
- (b) it wished to appoint SGS, Holland to determine the final quality of the Umpire Sample (**EWP Complaint**).

Particulars

Email from minchoya1@ewp.co.kr to kaitaiyeo@thisisnoble.com and copied to others dated 12 March 2020 sent by Cobra to Lisa Thomas (Noble) and Daniel Hunt (Noble) and copied to another attaching letter from Hyeon-Bin, Kim (Manager, Corporate Partnership & Procurement Division, EWP) to Noble dated 11 March 2020 [NBL.0002.0001.4704, NBL.0002.0001.4705].

86. On 12 March 2020, McCarthy and Boom were aware of, and discussed, the EWP Complaint.

Particulars

Messages between McCarthy and Boom dated 12 March 2020 [TER.0179.0001.1604, TER.0179.0001.1605]

87. On 13 March 2020, Ransley became aware of the EWP Complaint.

Particulars

On 13 March 2020, at or around 8:15 am McCarthy, Boom and Ransley discussed the EWP Complaint [TER.0051.0006.0220].

88. On 7 April 2020, SGS issued the results of its umpire testing to Noble and TerraCom determining the NCV of the Sakizaya Leader Umpire Sample as being 5,396 kcal/kg, and not 5,477 kcal/kg as reported in the Certificate of Analysis.

Particulars

Email from Frank Post (Senior Employee Customer Service Minerals, SGS Nederland BV) to Joanne Shields (Noble) copied to McCarthy, Boom and others dated 7 April 2020 attaching 'SF-036308.001 - UMPIRE report1.pdf' and 'SF-036308.001 - UMPIRE report2.pdf' [BOO.0002.0008.7970, BOO.0002.0008.8166, BOO.0002.0008.8188].

89. As a consequence of the NCV as determined by SGS in the preceding paragraph:

- (a) the price of the Sakizaya Leader shipment was adjusted downward; and
- (b) Noble required Orion to refund to Noble USD66,990.84.

Particulars

Debit note issued by Noble to Orion dated 10 June 2020 [TRL.0004.0036.2795].

Proposed March Announcement

90. On 10 March 2020 at 8:38 am, TerraCom lodged with the ASX an announcement titled 'Statement by Deputy Chairman on allegations made by Justin Williams' (**Proposed March Announcement**) which stated:
- (a) Williams' allegations were made only after he was dismissed as part of a company-wide redundancy program;
 - (b) apart from wanting his job back, Mr Williams made several outrageous requests for a financial payment of \$5,000,000 in return for not pursuing TerraCom over his dismissal, which was a decision made as part of a cost reduction program driven by market forces;
 - (c) TerraCom took the allegations by Williams that its CEO and CFO had been involved in a scheme relating to the fake analysis of coal samples seriously and an independent investigation forensic investigation was conducted;
 - (d) the investigation 'found no evidence of wrongdoing';
 - (e) '[n]one of [TerraCom's] customers have raised any quality control issues' with the coal exported from Blair Athol; and
 - (f) the announcement had been approved by the TerraCom's Disclosure Committee for release.

Particulars

ASX lodgement records [TER.1041.0001.0006]. TerraCom ASX announcement dated 10 March 2020 titled 'Statement by Deputy Chairman on allegations made by Justin Williams' [TER.1041.0001.0004].

Involvement of McCarthy, Boom, Ransley and King in the Proposed March Announcement

91. On 26 February 2020, John Hurst of Teneo (**Hurst**) provided a draft of the Proposed March Announcement to Ransley.

Particulars

Email from Hurst to Ransley dated 26 February 2020 attaching 'ASXstatementWilliams.docx' [TRL.0001.0010.4274, TRL.0001.0010.4275].

92. On 2 March 2020, in a message conversation between McCarthy, Boom and Ransley:
- (a) McCarthy and Ransley stated that they were angry about the allegations made by Williams; and
 - (b) Ransley stated that he was 'putting a release out tomorrow that calls [Williams] a black mailer basically'.

Particulars

WeChat messages sent by McCarthy and Ransley between 7:42 pm and 7:50 pm on 2 March 2023 in WeChat group chat involving McCarthy, Ransley and Boom.

93. On 2 March 2020, Hurst provided another draft of the Proposed March Announcement to Ransley and King.

Particulars

Email from Hurst to Ransley copied to King dated 2 March 2020 attaching 'ASX Statement Williams – Suggested Ashurst & Teneo Amendments_Clean.pdf' [TRC.0002.0131.6666, TRC.0002.0131.6671].

94. On 2 March 2020, Ransley provided a further draft of the Proposed March Announcement to Hurst and King.

Particulars

Email from Ransley to King and Hurst dated 2 March 2020 attaching 'ASX Statement Williams - Suggested Ashurst & Teneo Amendments_Clean-1.pdf' [TRC.0002.0131.6755, TRC.0002.0131.6756].

95. On 9 March 2020 at 2:35 pm AEDT, Etccl sent a further draft of the Proposed March Announcement to Ransley and Boom.

Particulars

Email from Etccl to Ransley and Boom copied to Verity Barritt (Petra Capital) dated 9 March 2020 attaching '20-03-09 ASX Announcement - Response to Australian Financial Review Article (ME.VB).docx' [TRL.0001.0010.5896, TRL.0001.0010.5897].

96. On 9 March 2020 at 2:52 pm AEDT, Ransley sent a further draft of the Proposed March Announcement to Hurst, Etccl, Boom and King.

Particulars

Email from Ransley to Hurst copied to Etccl, Boom and King dated 9 March 2020 attaching '20-03-09 ASX Announcement - Response to Australian Financial Review Article (ME.VB).docx' [TRC.0002.0131.7607, TRC.0002.0131.7608].

97. On 9 March 2020 at 3:13 pm AEDT, Etccl sent a further draft of the Proposed March Announcement to Boom, Ransley, King and Hurst.

Particulars

Email from Etccl to Ransley and Hurst copied to Boom and King dated 9 March 2020 attaching '20-03-09 ASX Announcement - Response to Australian Financial Review Article (ME.VB.CR).docx' [TRC.0002.0131.7618, TRC.0002.0131.7620].

98. On 9 March 2020 at 4:27 pm AEDT, Hurst sent a further draft of the Proposed March Announcement to Etccl, McCarthy, Boom, Ransley and King.

Particulars

Email from Hurst to Etccl, Ransley, King, Boom and McCarthy dated 9 March 2020 attaching '20-03-09 ASX Announcement - Response to Australian Financial Review Article Teneo.docx' [TRC.0002.0131.7683, TRC.0002.0131.7684].

99. On 9 March 2020 at 4:45 pm AEDT, Etccl sent a further draft of the Proposed March Announcement to McCarthy, Boom, Ransley, King and Hurst.

Particulars

Email from Etccl to Hurst, Ransley, King, Boom and McCarthy dated 9 March 2020 attaching '20-03-09 ASX Announcement - Response to Australian Financial Review Article (Teneo.ME).docx' and '20-03-09 ASX Announcement - Response to Australian Financial Review Article (Teneo.ME).pdf' [TRC.0002.0131.7686, TRC.0002.0131.7687, TRC.0002.0131.7689].

100. On 9 March 2020 at 4:50 pm AEDT, King replied to the email referred to in paragraph 99 stating that he was 'generally happy' with the Proposed March Announcement.

Particulars

Email from King to Etccl, Hurst, Ransley, Boom and McCarthy dated 9 March 2020 [TRC.0002.0131.7693].

101. On 9 March 2020 at 4:54 pm AEDT, Etccl sent clean copies of the Proposed March Announcement to McCarthy, Boom, Ransley, King and Hurst.

Particulars

Email from Etccl to King, Hurst, Ransley, Boom and McCarthy dated 9 March 2020 attaching '20-03-09 ASX Announcement - Response to Australian Financial Review Article (clean).pdf' and '20-03-09 ASX Announcement - Response to Australian Financial Review Article (clean).docx' [TRC.0002.0131.7693, TRC.0002.0131.7695, TRC.0002.0131.7697].

102. On 9 March 2020 at 9:52 pm AEDT, Ransley sent a further draft of the Proposed March Announcement to Etccl and Boom.

Particulars

Email from Ransley to Etccl and Boom from TerraCom9March.docx' [TRL.0001.0010.5999, TRL.0001.0010.6000].

103. On 9 March 2020 at 10:08 pm AEDT, Etccl sent a further draft of the Proposed March Announcement to Ransley and Boom.

Particulars

Email from Etccl to Ransley and Boom dated 9 March 2020 attaching 'Statement from TerraCom.pdf' [TRL.0001.0010.6001, TRL.0001.0010.6002].

104. On 9 March 2020 at 10:59 pm AEDT, Etccl sent an email to McCarthy, Boom, Ransley and King which:

- (a) was addressed to the Disclosure Committee;
- (b) attached a statement titled 'Response to recent media response' which contained one paragraph relating to Williams but otherwise addressed unrelated matters relating to Universal Coal Plc;
- (c) attached the Proposed March Announcement; and
- (d) stated that Etccl planned to lodge the 'Response to recent media response' statement and Proposed March Announcement with the ASX at approximately 7:30 to 8 am.

Particulars

Email from Etccl to King, Ransley, McCarthy and Boom dated 9 March 2020 attaching '2020.03.10 - TER ASX Announcement (Response to recent media reports)(FINAL).docx' and '2020.03.10 - TER ASX Announcement (Deputy Chairman Statement)(FINAL).docx' [TRC.0002.0131.7726, TRC.0002.0131.7727, TRC.0002.0131.7731].

105. On 9 March 2020 at 11:03 pm AEDT, Etccl emailed McCarthy, Boom, Ransley and King stating that Etccl and Ransley had agreed to remove the paragraph relating to Williams from the statement 'Response to recent media response'.

Particulars

Email from Etccl to King, Ransley, McCarthy and Boom dated 9 March 2020 attaching '2020.03.10 - TER ASX Announcement (Response to recent media reports)(FINAL).docx' and '2020.03.10 - TER ASX Announcement (Deputy Chairman Statement)(FINAL).docx' [TRC.0002.0131.7737, TRC.0002.0131.7738, TRC.0002.0131.7742].

106. On 10 March 2020 at 7:34 am AEDT, King approved the Proposed March Announcement.

Particulars

Email from King to Etccl copied to Ransley, McCarthy and Boom dated 10 March 2020 [TRC.0002.0131.7782].

107. On 10 March 2020, Etccl lodged the Proposed March Announcement with the ASX.

Particulars

ASX lodgement records [TER.1041.0001.0006]. TerraCom ASX announcement dated 10 March 2020 titled 'Statement by Deputy Chairman on allegations made by Justin Williams' [TER.1041.0001.0004].

108. On 10 March 2020, the Proposed March Announcement was given to the ASX with the knowledge, agreement and/or acquiescence of McCarthy, Boom, Ransley and King.

Particulars

ASIC relies on the matters pleaded at paragraphs 20, 62, 67(g), 71, 90(f) and 91 to 106 above.

109. In the premises, each of McCarthy, Boom, Ransley and King authorised or permitted the making available or the giving of the Proposed March Announcement to the ASX.

THE OPEN LETTER

ASX declines to publish the Proposed March Announcement

110. On 10 March 2020, the ASX refused to release the Proposed March Announcement to the market and stated that:
- (a) matters which are part of legal proceedings should not be broadcast on the ASX platform; and
 - (b) any announcement under List Rule 3.1 should be expressed in a clear and objective manner and emotive, intemperate or defamatory language should not be used.

Particulars

Emails from Lauren Osbich (Adviser, Listings Compliance, ASX) to Etccl dated 10 March 2020 [TER.1019.0001.0013].

111. On the morning of 10 March 2020, Etccl suggested three alternatives to the content of the Proposed March Announcement to ASX.

Particulars

Emails from Etccl to Lauren Obsich and Adrian Smythe (ASX) dated 10 March 2020 [TER.1019.0001.0013].

112. ASX did not accept the changes proposed by Etccl and refused to release the Proposed March Announcement.

Particulars

Emails from Lauren Osbich (Adviser, Listings Compliance, ASX) to Etccl dated 10 March 2020 [TER.1019.0001.0013].

113. On 10 March 2020, Etccl, Hurst and Ransley sent emails, which were also copied to King, McCarthy and Boom, arranging for the contents of the Proposed March Announcement to be printed as an open letter in the AFR and *The Australian*.

Particulars

Email from Etccl to Hurst also copied to McCarthy, Boom, Ransley and King dated 10 March 2020 attaching '2020.03.10 - TER MEDIA STATEMENT (Deputy Chairman Statement)(FINAL).docx' and '2020.03.10 - TER MEDIA STAEMENT (Response to recent media reports)(FINAL).docx' [TRC.0002.0131.7809, TRC.0002.0131.7810, TRC.0002.0131.7812].

Email from Ransley to Etccl copied to Hurst, King, Boom and McCarthy dated 10 March 2020 [TRC.0002.0131.7809]. Email from Hurst to Ransley copied to Etccl, King, Boom and McCarthy dated 10 March 2020 [TRC.0002.0131.7809]. Email

from Ransley to Hurst copied to Etccl, King, Boom and McCarthy dated 10 March 2020 [TRC.0002.0131.7809]. Email from Hurst to Ransley copied to Etccl, King, Boom and McCarthy dated 10 March 2020 attaching 'TER_Shareholder Letter_DRAFT)100320.docx' [TRC.0002.0131.7843, TRC.0002.0131.7846]. Email from Ransley to Hurst copied to McCarthy, Etccl, Boom and King dated 10 March 2020 [TRC.0002.0131.7865]. Email from Hurst to Ransley copied to McCarthy, Etccl, Boom and King dated 10 March 2020 attaching 'TER_Shareholder Letter_DRAFT_100320.docx' [TRC.0002.0131.7865, TRC.0002.0131.7869]. Email from Etccl to Hurst and Ransley copied to King, Boom and McCarthy attaching 'TER_Shareholder Letter_DRAFT_100320 (003)(ME).docx' and 'TER_Shareholder Letter_DRAFT_100320 (003)(ME).pdf' [TRC.0002.0131.7880, TRC.0002.0131.7884, TRC.0002.0131.7886].

The Open Letter

114. On 12 March 2020, TerraCom caused the AFR and *The Australian* to publish an 'Open Letter to TerraCom Shareholders' (**Open Letter**) which stated that:
- (a) TerraCom continued to categorically deny the allegations made by Williams;
 - (b) Williams initiated proceedings only after TerraCom did not meet his demands to be reinstated to his role at TerraCom and a \$5,000,000 payment;
 - (c) Williams has been unsuccessful with similar allegations in the past about other coal mining companies for which he has worked;
 - (d) TerraCom took allegations that its CEO and CFO had been involved in a scheme relating to the fake analysis of coal samples seriously and had an independent investigation conducted which found no evidence of wrongdoing; and
 - (e) none of TerraCom's customers had raised quality control issues with the coal exported by TerraCom.

Particulars

TerraCom Open Letter to Shareholders published in the AFR and *The Australian* dated 12 March 2020 [TRC.0002.0131.8156].

Involvement of McCarthy, Boom, Ransley and King in the Open Letter

115. Prior to, and at the time of, the publication in the AFR of the Open Letter, each of McCarthy, Boom, Ransley and King:
- (a) was aware of the ASX declining to publish the Proposed March Announcement and its reasons for declining to publish the Proposed March Announcement as pleaded in paragraph 110; and
 - (b) had discussed with one or more of the others the content of the proposed Open Letter.
116. In the premises, the Open Letter was published with the knowledge, agreement and/or acquiescence of McCarthy, Boom, Ransley and King.

Particulars

ASIC relies in the matters pleaded above at paragraphs 20, 90(f), 91 to 109 and 110 to 115.

117. In the premises, each of McCarthy, Boom, Ransley and King authorised or permitted the publication of the Open Letter in the AFR.

THE APRIL ANNOUNCEMENT

April Announcement

118. On 3 April 2020 at 8:43am, TerraCom lodged with the ASX a further announcement concerning the allegations made by Justin Williams (the **April Announcement**), which stated that:
- (a) TerraCom took the allegations by Williams that its CEO and CFO had been involved in a scheme relating to the fake analysis of coal samples seriously and an independent investigation forensic investigation was conducted;
 - (b) the investigation found that the allegations against them were 'unfounded' and 'neither had done anything wrong';
 - (c) some of TerraCom's customers also asked for additional coal samples to be tested, and 'in every instance, they found no quality control issues';
 - (d) McCarthy had said that, during his time as CEO, 'there has not been an occasion whereby clients have complained about the quality of the coal as certified by the Certificate of Analysis (COA)' and that '[i]n the one recent instance where a customer requested three shipments be "Umpire tested"... the Umpire results aligned with and were consistent with the certified (COA) results used for the basis of invoicing and payment';
 - (e) Williams' allegations were made only after he was dismissed as part of a Company-wide redundancy program; and
 - (f) the announcement had been approved by the Company's Disclosure Committee for release.

Particulars

ASX lodgement records [TER.1041.0001.0008]. Email from Etccl to King, Ransley, McCarthy Boom and Hurst dated 3 April 2020 forwarding ASX confirmation of release email dated 3 April 2020 attaching TerraCom ASX Announcement dated 3 April 2020 titled 'Update on Court Proceedings' [TRL.0001.0010.8480, TRL.0001.0010.8481].

Involvement of McCarthy, Boom, Ransley and King in the April Announcement

119. On 31 March 2020, Hurst provided a draft of the April Announcement to McCarthy and Ransley.

Particulars

Email from Hurst to Ransley and McCarthy dated 31 March 2020 attaching 'TerraComCEOstatement.docx' [TRL.0001.0010.8217, TRL.0001.0010.8218].

120. On 1 April 2020, Hurst provided a draft of the April Announcement to McCarthy and Ransley which he stated was to respond to the 'ALS report' due the following morning.

Particulars

Email from Hurst to Ransley copied to McCarthy dated 1 April 2020 attaching 'TerraComresponsetoALS.docx' [TRL.0001.0010.8358, TRL.0001.0010.8360].

121. On 2 April 2020, ALS released an announcement to the ASX (**April ALS Announcement**) which stated that:
- (a) an independent forensic investigation (**ALS Investigation**) into the certification of coal samples in the Coal Superintending and Certification Unit within the ALS Coal business stream had been completed;
 - (b) the independent investigation had identified evidence that approximately 45-50% of the certificates of analysis were manually amended without justification in ALS' laboratories in Newcastle, Mackay, Gladstone and Emerald since 2007;
 - (c) ALS had continued to communicate with its clients about the progress of the investigation; and
 - (d) the conduct identified amounted to a serious breach of expected ethical standards.

Particulars

ALS' ASX Release 'ALS Coal Australian Superintending and Certification unit - completion of the independent investigation' dated 2 April 2020 [TRC.0002.0211.4576].

122. The Certificates of Analysis referred to in the April ALS Announcement as having been manually amended without justification included each of the shipments listed in Schedule 2.

Particulars

Paragraph 9 of Notice NTC2111206 issued to ALS Limited and each of the documents listed in Column 11 of Schedule 2 which were produced pursuant to paragraph 9 of Notice NTC2111206.

123. Prior to, and at the time of, the release of the April Announcement to the ASX, each of McCarthy, Boom, Ransley and King:
- (a) was aware of the April ALS Announcement; and
 - (b) discussed with one or more of the other, the content of the proposed April Announcement and/or the extent to which the ALS Announcement was relevant to the proposed April Announcement.

124. On 2 April 2020 at 8:48 am, Hurst emailed McCarthy and Ransley a copy of the April ALS Announcement.

Particulars

Email from Hurst to Ransley and McCarthy dated 2 April 2020 [TRL.0001.0010.8392]. Further particulars may be provided after discovery.

125. On 2 April 2020 at 12:08 pm AEDT, Hurst emailed McCarthy, copied to Ransley, an updated draft of the April Announcement to be used in response to media queries.

Particulars

Email from Hurst to McCarthy, copied to Ransley, dated 2 April 2020 attaching 'TerraComresponsetoALS.docx' [TRL.0001.0010.8392, TRL.0001.0010.8396].

126. On 2 April 2020 at 12:23 pm AEDT, McCarthy sent an updated draft of the April Announcement with edits to Hurst and Ransley.

Particulars

Email from McCarthy to Hurst and Ransley dated 2 April 2020 attaching 'TerraComresponsetoALS_dm.docx' and 'TerraComresponsetoALS_dm.pdf' [TRL.0001.0010.8397, TRL.0001.0010.8401, TRL.0001.0010.8402].

127. On 2 April 2020 at 2:39 pm AEDT, Hurst emailed McCarthy and Ransley an updated draft of the April Announcement.

Particulars

Email from Hurst to McCarthy and Ransley dated 2 April 2020 attaching 'TerraComstatement2April.docx' [TRL.0001.0010.8419, TRL.0001.0010.8424].

128. On 2 April 2020 at 5:03 pm AEDT, Hurst emailed McCarthy and Ransley an updated draft of the April Announcement.

Particulars

Email from Hurst to Ransley, McCarthy and Etccl dated 2 April 2020 attaching 'TerraComstatement2April.docx' [TRL.0001.0010.8449, TRL.0001.0010.8450].

129. On 2 April 2020 at 5:14 pm, Ransley emailed Hurst copied to McCarthy, Etccl and Boom asking Etccl to prepare to lodge the draft April Announcement at 8 am the following morning.

Particulars

Email from Ransley to Hurst copied to McCarthy, Etccl and Boom dated 2 April 2020 [TRL.0001.0010.8458].

130. On 2 April 2020 at 5:35 pm AEDT, Etccl emailed Ransley, McCarthy and Boom attaching the draft April Announcement reformatted as an ASX announcement which stated that the announcement had been approved for release by the Disclosure Committee (the contents of which were materially identical to the April Announcement).

Particulars

Email from Etccl to Ransley and Hurst copied to McCarthy and Boom dated 2 April 2020 attaching '2020.04.03 - TER ASX Announcement (Update on Court Proceedings).docx' [TRL.0001.0010.8458, TRL.0001.0010.8461].

131. On 2 April 2020 at 6:31 pm AEDT, Ransley approved the contents of the April Announcement.

Particulars

Email from Ransley to Etccl copied to Hurst, McCarthy and Boom dated 2 April 2020 [TRC.0002.0132.2888].

132. On 2 April 2020 at 9:25 pm AEDT, Etccl emailed McCarthy, Boom, Ransley and King a copy of the April Announcement and stated that the planned release for the announcement was the following morning.

Particulars

Email from Etccl to King, Ransley, McCarthy and Boom dated 2 April 2020 attaching '2020.04.03 - TER ASX Announcement (Update on Court Proceedings).docx' [TRC.0002.0132.2882, TRC.0002.0132.2883].

133. On 2 April 2020 at 9:29 pm AEDT, McCarthy approved the release to the ASX of the April Announcement.

Particulars

Email from McCarthy to Etccl copied to King, Ransley and Boom dated 2 April 2021 [BOO.0002.0004.8119].

134. On 2 April at 10:24 pm AEDT, Ransley approved the release to the ASX of the April Announcement.

Particulars

Email from Ransley to Etccl copied to King, McCarthy and Boom dated 2 April 2020 [BOO.0002.0004.8131].

135. On 2 April 2020 at 10:47 pm AEDT, Boom approved the release to the ASX of the April Announcement.

Particulars

Email from Boom to Ransley and Etccl copied to King and McCarthy dated 2 April 2020 [BOO.0002.0004.8134].

136. On 2 April 2020 at 11:04 pm AEDT, Hurst emailed McCarthy, Boom, Ransley, King and Etccl an article published by Reuters which:

- (a) referred to the April ALS Announcement; and
- (b) stated that TerraCom had said in a statement to Reuters that the allegations against it were unfounded.

Particulars

Email from Hurst to Ransley and Etccl copied to McCarthy, Boom and King dated 2 April 2020 including Reuters article titled 'Australia's ALS probe finds half of coal quality reports amended' [TRC.0002.0132.2888].

137. On 3 April 2020 at 8:08 am AEDT, Etccl emailed King a copy of the April Announcement and stated that she wanted to make sure that he had an opportunity to look at it before it was published.

Particulars

Email from Etccl to King dated 3 April 2020 attaching '2020.04.03 - TER ASX Announcement (Update on Court Proceedings).docx' [TRC.0002.0154.2529, TRC.0002.0154.2530].

138. On 3 April 2020 between 8:08 am and 8:30 am AEDT, King approved the release to the ASX of the April Announcement.

Particulars

King's approval is to be inferred from - Email from Etccl to McCarthy and Boom dated 3 April 2020 [BOO.0002.0004.8578].

139. On 3 April 2020 at 8:30 am AEDT, Etccl lodged the April Announcement with the ASX.

Particulars

ASX lodgement records [TER.1041.0001.0008].

140. On 3 April 2020 at 8:43 am AEDT, the April Announcement was released to the market.

Particulars

Email from ASXMarket.AnnouncementsOffice@asx.com.au to ASXMarket.AnnouncementsOffice@asx.com.au dated 3 April 2020 [TRL.0001.0010.8480].

141. In the premises, the April Announcement was published with the knowledge, agreement and/or acquiescence of McCarthy, Boom, Ransley and King.

Particulars

ASIC relies on the matters pleaded at paragraphs 20, 62, 67(g), 71, 90(f), 108, 116 and 118 to 140 above.

142. In the premises, each of McCarthy, Boom, Ransley and King authorised or permitted the making available or the giving of the April Announcement to the ASX.

ALS Investigation

143. The ALS Investigation identified that Certificates of Analysis issued by ALS had been manually amended without justification.

144. The Certificates of Analysis identified by the ALS Investigation as having been manually amended without justification included Certificates of Analysis issued to TerraCom.

Particulars

Paragraph 9 of Notice NTC2111206 issued to ALS Limited and each of the documents listed in Column 11 of Schedule 2 which were produced pursuant to paragraph 9 of Notice NTC2111206.

145. If TerraCom had made reasonable enquiries of ALS, ALS would have informed TerraCom that the ALS Investigation had concluded that:
- (a) Certificates of Analysis issued to TerraCom had been manually amended without justification;
 - (b) the manual amendments had been made by ALS employees at the request of TerraCom employees; and
 - (c) the ALS employees who had been suspended as a result of the ALS Investigation included Miller.

MISLEADING INFORMATION CONTRAVENTIONS – 1309(2) CORPORATIONS ACT

The February Announcement, Proposed March Announcement and April Announcement

146. By reason of the matters pleaded above at paragraphs 67 to 72, 90 to 109 and 118 to 142 above, each of McCarthy, Boom, Ransley and King made available or gave information to, or authorised or permitted the making available of or giving of information to, the ASX within the meaning of s 1309(2) of the Corporations Act in the form of:
- (a) on 24 February 2020, the February Announcement;
 - (b) on 10 March 2020, the Proposed March Announcement;
 - (c) on 3 April 2020, the April Announcement; and
 - (d) by 3 April 2020, the February Announcement, Proposed March Announcement and April Announcement taken together.

Exoneration Representations

147. The February Announcement, Proposed March Announcement and April Announcement, independently and together, gave rise to one or more of the following representations, namely, that the 'independent investigation' referred to in each announcement (being the PwC Report) had:
- (a) rejected all of the Whistleblower Allegations;
 - (b) found that the Whistleblower Allegations were "unfounded";

- (c) excluded any involvement by TerraCom, McCarthy or Boom and any employees or officers of TerraCom in the conduct the subject of the Whistleblower Allegations; and
 - (d) rejected the allegation of TerraCom's involvement in the alteration of coal quality certificates, namely Certificates of Analysis (together, the **Exoneration Representations**).
148. The Exoneration Representations comprised information relating to the affairs of TerraCom.
149. The Exoneration Representations comprised information:
- (a) that was false or misleading in a material particular;
 - (b) further or alternatively, that had omitted from it a matter or thing that rendered the information misleading in a material respect;
- by reason of the PwC Findings and PwC Matters for Inquiry pleaded at paragraphs 53 to 56 above.
150. Each of McCarthy, Boom, Ransley and King engaged in the conduct pleaded at paragraphs 146 and 149 without having taken reasonable steps to ensure that the information was not false or misleading in a material particular and did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect by failing to take reasonable steps to:
- (a) review and consider the PwC Report;
 - (b) understand and/or investigate the PwC Findings and PwC Matters for Inquiry;
 - (c) contact relevant witnesses or requesting that this be done by PwC or others, including failing to contact ALS to discuss the allegations made by Williams, the matters raised in the PwC Report, the February ALS Announcement and the April ALS Announcement, or causing such contact to be made by an appropriate person such as PwC;
 - (d) cause the Board of TerraCom to consider taking the steps pleaded in (b) and (c); and
 - (e) ensuring that the February Announcement, Proposed March Announcement and April Announcement was amended so that it accurately reflected the PwC Report having regard to the PwC Findings and PwC Matters for Inquiry.
151. In the premises, by reason of the matters pleaded in paragraphs 146 to 150 above, each of McCarthy, Boom, Ransley and King contravened section 1309(2) and s 1309(12) of the Corporations Act:
- (a) on 24 February 2020;
 - (b) further or alternatively, on and from 10 March 2020; and
 - (c) further or alternatively, on and from 3 April 2020.

No Customer Complaint Representations

152. The Proposed March Announcement and the April Announcement, independently and together, gave rise to one or more of the following representations:

- (a) none of TerraCom's customers had enquired about or raised any quality control issues with the coal exported by TerraCom from its Blair Athol mine;
- (b) while some of TerraCom's customers had also asked for additional coal samples to be tested, in every instance, they found no quality control issues; and
- (c) during McCarthy's time as CEO of TerraCom there had not been an occasion where clients had complained about the quality of coal as certified by the Certificate of Analysis;

(together, the **No Customer Complaint Representations**).

153. The No Customer Complaint Representations comprised information relating to the affairs of TerraCom.

154. The No Customer Complaint Representations comprised information:

- (a) that was false or misleading in a material particular; and
- (b) further or alternatively, that had omitted from it a matter or thing that rendered the information misleading in a material respect;

by reason of the matters pleaded above at paragraphs 73 to 89.

155. Each of McCarthy, Boom, Ransley and King engaged in the conduct pleaded at paragraphs 146 and 152 to 154 above without having taken reasonable steps to ensure that the information was not false or misleading in a material particular and did not have omitted from it a matter or thing, the omission of which rendered the information misleading in a material respect, by having failed to take reasonable steps to:

- (a) review and consider the drafts of the February Announcement, Proposed March Announcement and April Announcement;
- (b) review and consider the correspondence and documents relevant to the matters pleaded above at paragraphs 74 to 89;
- (c) further or alternatively to (b), enquire whether any correspondence had been received from customers making enquiries about the quality of the coal or test results; and
- (d) ensure that the Proposed March Announcement and April Announcement were amended so that they accurately reflected the matters pleaded above at paragraphs 74 to 89 above.

156. In the premises, by reason of the matters pleaded in paragraphs 146 and 152 to 155 above, each of McCarthy, Boom, Ransley and King contravened section 1309(2) and 1309(12) of the Corporations Act:

- (a) on 24 February 2020;
- (b) further or alternatively, on and from 10 March 2020; and
- (c) further or alternatively, on and from 3 April 2020.

BREACH OF OFFICER'S DUTIES – 180(1) CORPORATIONS ACT

157. ASIC repeats and relies upon:

- (a) the relevance of coal quality to TerraCom's revenue and profit as pleaded above at paragraphs 7 to 13;
- (b) the fact that McCarthy, Boom, Ransley and King were each members of TerraCom's Disclosure Committee as pleaded above at paragraph 20;
- (c) the fact that the Board of TerraCom was aware that Williams alleged serious criminal conduct or misconduct by employees or officers of TerraCom concerning the manipulation of Certificates of Analysis as pleaded at paragraphs 27, 31 and 36;
- (d) the fact that Williams was terminated by McCarthy and Boom only shortly after having been recruited as pleaded at paragraphs 22 to 33;
- (e) the fact that Williams alleged that the McCarthy and Boom knew of the alleged conduct;
- (f) the fact that TerraCom, Ransley and King determined that an independent investigation was needed to consider the Whistleblower Allegations as pleaded at paragraph 45 above;
- (g) the receipt by of each of McCarthy, Boom, Ransley and King of the PwC report as pleaded at paragraphs 57 to 60;
- (h) the PwC Findings and PwC Matters for Inquiry pleaded above at paragraphs 53 to 56;
- (i) the February ALS Announcement pleaded at paragraph 63;
- (j) the February AFR Article pleaded at paragraph 64;
- (k) the April ALS Announcement pleaded at paragraph 121;
- (l) the findings of the ALS Investigation pleaded at paragraphs 143 and 144;
- (m) the fact that, had McCarthy, Boom, Ransley and King made reasonable enquiries with ALS following the February ALS Announcement or the April ALS Announcement, ALS would have informed them of the matters pleaded at paragraph 145; and

- (n) the fact that McCarthy, Boom, Ransley and King had knowledge of and were involved in the drafting, review and/or approval of the contents of the February Announcement, Proposed March Announcement, Open Letter and April Announcement as pleaded above at paragraphs 71, 108, 116 and 141.

Contravention of s 180 by McCarthy

158. At all material times, pursuant to s 180(1) of the Corporations Act, McCarthy was obliged to exercise his power and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were an officer of a corporation in TerraCom's circumstances; and
- (b) occupied the office held by, and had the same responsibilities within TerraCom as, McCarthy.

159. McCarthy's responsibilities within TerraCom have included serving TerraCom:

- (a) between at least December 2019 and 2 April 2020, as its Chief Executive Officer;
- (b) since 18 April 2019, as director of TerraCom's wholly owned subsidiary, Orion; and
- (c) between at least December 2019 and 2 April 2020, as a member of its Disclosure Committee.

160. A reasonable officer of a corporation in TerraCom's circumstances and who occupied the offices held by McCarthy and had the same respective responsibilities as McCarthy, would have, on and from the date they received:

- (a) the PwC Report;
- (b) further or alternatively, the February ALS Announcement; and
- (c) further or alternatively, the April ALS Announcement,

in acting with care and diligence:

- (d) taken diligent interest in the information available to them, including but not limited to the PwC Report, the February ALS Announcement, and the April ALS Announcement, to understand that information, and apply an enquiring mind to the responsibilities placed upon them;
- (e) taken any reasonable steps to understand and/or investigate the reasons for the PwC Findings;
- (f) taken any reasonable steps to understand and/or investigate the existence of inconsistent coal quality results;

- (g) taken any reasonable steps to investigate the PwC Matters for Inquiry;
 - (h) contacted relevant witnesses, including contacting any representative of ALS responsible for testing TerraCom coal to discuss:
 - (i) the Whistleblower Allegations;
 - (ii) the matters raised in the PwC Report including the PwC Findings and the PwC Matters for Inquiry;
 - (iii) on and from 24 February 2020, the February ALS Announcement;
 - (iv) on and from 2 April 2020, the April ALS Announcement;
 - (i) alternatively to subparagraph (h), caused the contact referred to in subparagraph (h) above to be made by an appropriate person on TerraCom's behalf, such as PwC; and
 - (j) caused the Board of TerraCom to consider taking the steps pleaded in subparagraphs (e) to (i).
161. On and from 20 January 2020, McCarthy failed to exercise the degree of care and diligence that a reasonable person acting as Chief Executive Officer of a company in TerraCom's circumstances would have exercised by:
- (a) failing to take the steps in paragraph 160; and
 - (b) further or alternatively, to the extent that he did not read the PwC Report, by failing to read the PwC Report in circumstances where:
 - (i) the PwC Report had been specifically commissioned on instruction from the TerraCom Board;
 - (ii) McCarthy was a member of the Disclosure Committee;
 - (iii) McCarthy received copies of each draft ASX announcement, and authorised and permitted the release of the February Announcement, the Proposed March Announcement, the Open Letter and the April Announcement or at least knew that they were to be published; and
 - (iv) McCarthy knew that TerraCom's ASX announcements typically expressly stated that they had been authorised for release by the Disclosure Committee.
162. McCarthy contravened section 180(1) of the Corporations Act:
- (a) on and from 20 January 2020, by reason of the matters pleaded in paragraphs 157 to 161 (except paragraphs 160(h)(iii) and 160(h)(iv)) above;

- (b) on and from 24 February 2020, by reason of the matters pleaded in paragraphs 157 to 161 (except paragraph 160(h)(iv)) above; and
- (c) on and from 2 April 2020, by reason of the matters pleaded in paragraphs 157 to 161 above.

Contravention of s 180 by Boom

163. At all material times, pursuant to s 180(1) of the Corporations Act, Boom was obliged to exercise his power and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were an officer of a corporation in TerraCom's circumstances; and
- (b) occupied the office held by, and had the same responsibilities within TerraCom as, Boom.

164. Boom's responsibilities within TerraCom have included serving TerraCom:

- (a) between at least December 2019 and 2 April 2020, as its Chief Financial Officer;
- (b) since 31 December 2018, as director of TerraCom's wholly owned subsidiary, Orion; and
- (c) between at least December 2019 and 2 April 2020, as a member of its Disclosure Committee.

165. A reasonable officer of a corporation in TerraCom's circumstances and who occupied the offices held by Boom and had the same respective responsibilities as Boom, would have, on and from the date they received:

- (a) the PwC Report;
- (b) further or alternatively, the February ALS Announcement; and
- (c) further or alternatively, the April ALS Announcement,

in acting with care and diligence:

- (d) taken diligent interest in the information available to them, including but not limited to the PwC Report, the February ALS Announcement, and the April ALS Announcement, to understand that information, and apply an enquiring mind to the responsibilities placed upon them;
- (e) taken any reasonable steps to understand and/or investigate the reasons for the PwC Findings;
- (f) taken any reasonable steps to understand and/or investigate the existence of inconsistent coal quality results;
- (g) taken any reasonable steps to investigate the PwC Matters for Inquiry;

- (h) contacted relevant witnesses, including contacting any representative of ALS responsible for testing TerraCom coal to discuss:
 - (i) the Whistleblower Allegations;
 - (ii) the matters raised in the PwC Report including the PwC Findings and the PwC Matters for Inquiry;
 - (iii) on and from 24 February 2020, the February ALS Announcement;
 - (iv) on and from 2 April 2020, the April ALS Announcement;
 - (i) alternatively to subparagraph 165(h), caused the contact referred to in subparagraph (h) above to be made by an appropriate person on TerraCom's behalf, such as PwC; and
 - (j) caused the Board of TerraCom to consider taking the steps pleaded in subparagraphs (e) to (i).
166. On and from 13 January 2020, Boom failed to exercise the degree of care and diligence that a reasonable person acting as Chief Financial Officer of a company in TerraCom's circumstances would have exercised by:
- (a) failing to take the steps in paragraph 165;
 - (b) and further or alternatively, to the extent that he did not read the PwC Report, by failing to read the PwC Report in circumstances where:
 - (i) the PwC Report had been specifically commissioned on instruction from the TerraCom Board; and
 - (ii) Boom was a member of the Disclosure Committee;
 - (iii) Boom received copies of each draft ASX announcement, and authorised and permitted the release of the February Announcement, the Proposed March Announcement, the Open Letter and the April Announcement or at least knew that they were to be published; and
 - (iv) Boom knew that TerraCom's ASX announcements typically expressly stated that they had been authorised for release by the Disclosure Committee.
167. Boom contravened section 180(1) of the Corporations Act:
- (a) on and from 13 January 2020, by reason of the matters pleaded in paragraphs 157 and 163 to 166 (except paragraphs 165(h)(iii) and 165(h)(iv)) above;
 - (b) on and from 24 February 2020, by reason of the matters pleaded in paragraphs 157 and 163 to 166 (except paragraph 165(h)(iv)) above; and

- (c) on and from 2 April 2020, by reason of the matters pleaded in paragraphs 157 and 163 to 166 above.

Contravention of s 180 by Ransley

168. At all material times, pursuant to s 180(1) of the Corporations Act, Ransley was obliged to exercise his power and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were a director of a corporation in TerraCom's circumstances;
- (b) occupied the office held by, and had the same responsibilities within TerraCom as, Ransley.

169. Ransley's responsibilities within TerraCom have included serving TerraCom:

- (a) between 21 February 2020 and 8 July 2022, as its director and Deputy Chairman;
- (b) between at least December 2019 and 2 April 2020, as a member of its Disclosure Committee.

170. A reasonable director of a corporation in TerraCom's circumstances and who occupied the offices held by Ransley and had the same respective responsibilities as Ransley, would have, on and from the date they received:

- (a) the PwC Report;
- (b) further or alternatively, the February ALS Announcement; and
- (c) further or alternatively, the April ALS Announcement,

in acting with care and diligence:

- (d) taken diligent interest in the information available to them, including but not limited to the PwC Report, the February ALS Announcement, and the April ALS Announcement, to understand that information, and apply an enquiring mind to the responsibilities placed upon them;
- (e) taken any reasonable steps to understand and/or investigate the reasons for the PwC Findings;
- (f) taken any reasonable steps to understand and/or investigate the existence of inconsistent coal quality results;
- (g) taken any reasonable steps to investigate the PwC Matters for Inquiry;
- (h) contacted relevant witnesses, including contacting any representative of ALS responsible for testing TerraCom coal to discuss:

- (i) the Whistleblower Allegations;
 - (ii) the matters raised in the PwC Report including the PwC Findings and the PwC Matters for Inquiry;
 - (iii) on and from 24 February 2020, the February ALS Announcement;
 - (iv) on and from 2 April 2020, the April ALS Announcement;
- (i) alternatively to subparagraph 170(h), caused the contact referred to in subparagraph (h) above to be made by an appropriate person on TerraCom's behalf, such as PwC; and
 - (j) caused the Board of TerraCom to consider taking the steps pleaded in subparagraphs (e) to (i).
171. On and from 21 February 2020, Ransley failed to exercise the degree of care and diligence that a reasonable person acting as director of a company in TerraCom's circumstances would have exercised by:
- (a) failing to take the steps in paragraph 170; and
 - (b) further or alternatively, to the extent that he did not read the PwC Report, by failing to read the PwC Report in circumstances where:
 - (i) the PwC Report had been specifically commissioned on instruction from the TerraCom Board;
 - (ii) Ransley was a member of the Disclosure Committee;
 - (iii) Ransley received copies of each draft ASX announcement, and authorised and permitted the release of the February Announcement, the Proposed March Announcement, the Open Letter and the April Announcement or at least knew that they were to be published; and
 - (iv) Ransley knew that TerraCom's ASX announcements typically expressly stated that they had been authorised for release by the Disclosure Committee.
172. Ransley contravened section 180(1) of the Corporations Act:
- (a) on and from 16 December 2019, by reason of the matters pleaded in paragraphs 157 and 168 to 171 (except paragraphs 170(h)(iii) and 170(h)(iv)) above;
 - (b) on and from 24 February 2020, by reason of the matters pleaded in paragraphs 157 and 168 to 171 (except paragraph 170(h)(iv)) above; and
 - (c) on and from 2 April 2020, by reason of the matters pleaded in paragraphs 157 and 168 to 171.

Contravention of s 180 by King

173. At all material times, pursuant to s 180(1) of the Corporations Act, King was obliged to exercise his power and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:
- (a) were a director of a corporation in TerraCom's circumstances;
 - (b) occupied the office held by, and had the same responsibilities within TerraCom as, King.
174. King's responsibilities within TerraCom have included serving TerraCom:
- (a) between 17 May 2017 and about 31 March 2021, as its director;
 - (b) between about September 2017 and 31 March 2021, as its Chairman; and
 - (c) between at least December 2019 and 2 April 2020, as a member of its Disclosure Committee.
175. A reasonable director of a corporation in TerraCom's circumstances and who occupied the offices held by King and had the same respective responsibilities as King, would have, on and from the date they received:
- (a) the PwC Report;
 - (b) further or alternatively, the February ALS Announcement; and
 - (c) further or alternatively, the April ALS Announcement,
- in acting with care and diligence:
- (d) taken diligent interest in the information available to them, including but not limited to the PwC Report, the February ALS Announcement, and the April ALS Announcement, to understand that information, and apply an enquiring mind to the responsibilities placed upon them;
 - (e) taken any reasonable steps to understand and/or investigate the reasons for the PwC Findings;
 - (f) taken any reasonable steps to understand and/or investigate the existence of inconsistent coal quality results;
 - (g) taken any reasonable steps to investigate the PwC Matters for Inquiry;
 - (h) cause contact to be made by an appropriate person on TerraCom's behalf, such as PwC, with relevant witnesses, including contacting any representative of ALS responsible for testing TerraCom coal to discuss:

- (i) the Whistleblower Allegations;
 - (ii) the matters raised in the PwC Report including the PwC Findings and the PwC Matters for Inquiry;
 - (iii) on and from 24 February 2020, the February ALS Announcement; and
- (i) caused the Board of TerraCom to consider taking the steps pleaded in subparagraphs (e) to (h).
176. on and from 2 April 2020, the April ALS Announcement. On and from 20 January 2020, King failed to exercise the degree of care and diligence that a reasonable person acting as director of a company in TerraCom's circumstances would have exercised by:
- (a) failing to take the steps in paragraph 175; and
 - (b) further or alternatively, to the extent that he did not read the PwC Report, by failing to read the PwC Report in circumstances where:
 - (i) the PwC Report had been specifically commissioned on instruction from the TerraCom Board;
 - (ii) King was a member of the Disclosure Committee;
 - (iii) King received copies of each draft ASX announcement, and authorised and permitted the release of the February Announcement, the Proposed March Announcement, the Open Letter and the April Announcement or at least knew that they were to be published; and
 - (iv) King knew that TerraCom's ASX announcements typically expressly stated that they had been authorised for release by the Disclosure Committee.
177. King contravened section 180(1) of the Corporations Act:
- (a) on and from 20 January 2020, by reason of the matters pleaded in paragraphs 157 and 173 to 176 (except paragraphs 175(h)(iii) and 176) above;
 - (b) on and from 24 February 2020, by reason of the matters pleaded in paragraphs 157 and 173 to 176 (except paragraph 176) above; and
 - (c) on and from 2 April 2020, by reason of the matters pleaded in paragraphs 157 and 173 to 176 above.

WHISTLEBLOWER PROTECTION – 1317AC CORPORATIONS ACT

178. TerraCom engaged in conduct within the meaning of s 1317AC(1) of the Corporations Act (the **Public Announcement Conduct**) by reason of TerraCom publishing or causing to be published

the February Announcement, Open Letter and April Announcement, whether individually or together, as pleaded above at paragraphs 67, 114 and 118 in circumstances where the representations conveyed by such announcements were one or more of the following:

- (a) false or misleading by reason of the Exoneration Representations pleaded at paragraph 147 to 150 above;
- (b) false or misleading in nature by reason of Open Letter and the April Announcement, independently and together, giving rise to the No Customer Complaint Representations by reason of the matters pleaded at paragraph 152 to 155;
- (c) false or misleading in that they represented that Williams had been made redundant when in fact he was terminated in the circumstances of the matters pleaded at paragraph 27 to 30;
- (d) false, misleading or otherwise hurtful in that they represented or implied that Williams was a dishonest person and/or a person willing to make false and unfounded accusations of serious wrongdoing for his own personal commercial gain in circumstances where the PwC Findings supported the allegations of the existence of the practice referred to in subparagraphs 27(b) and 27(b)(ii);
- (e) insofar as the Open Letter was concerned, false, misleading or otherwise hurtful in that it represented that Williams initiated proceedings only after TerraCom did not meet his demands to be reinstated to his role at TerraCom and paid \$5,000,000 when in fact the reference to \$5,000,000 was made in a confidential and privileged mediation after initiating a Fair Work application;
- (f) insofar as the Open Letter was concerned, in that it represented that Williams had previously made or attempted to make false and unfounded accusations of wrongdoing to achieve a personal commercial gain when such a representation was misleading;
- (g) otherwise hurtful in their demeaning, belittling and high-handed tone and content, being content going above a full and fair presentation of TerraCom's position.

179. The conduct pleaded in paragraph 178 caused detriment to Justin Williams.

Particulars

- (a) Hurt, humiliation, distress and embarrassment.
- (b) Psychiatric harm.
- (c) Damage to reputation.
- (d) Consequential economic loss.

180. When TerraCom engaged in the conduct pleaded at paragraph 178, TerraCom believed or suspected that Williams made, may have made, proposed to make or could make a qualifying disclosure within the meaning of Part 9.4AAA of the Corporations Act, namely, where:

- (a) Williams had in fact made qualifying disclosures within the meaning of s 1317AA(1) and (2) of the Corporations Act to any, some or all of the following:
 - (i) to McCarthy and Boom as pleaded at paragraph 27 and 31 at a time when McCarthy and Boom were eligible recipients within the meaning of s 1317AA(2)(b);
 - (ii) to Ransley as pleaded at paragraph 34 to 36 at a time when the Board, and Ransley as its agent, was an eligible recipient within the meaning of s 1317AA(2)(b) (by reason of the matters pleaded in paragraph 35 above); and
 - (iii) to ASIC as pleaded in paragraph 43.

Particulars

It can be inferred that TerraCom was aware that Williams had made a qualifying disclosure to ASIC from the email chain between Petrine Costigan (Petrine Costigan Lawyers) and Meredith Bennett (Ashurst) from 4 March 2020 and 11 March 2020 [TRL.0001.0010.6274].

- (b) Williams may have made, proposed to make or could have made a qualifying disclosure within the meaning of s 1317AA(1) and (2) to any one or more officers of TerraCom, ASIC or both; and
 - (c) in either or both cases, Williams had reasonable grounds to suspect that the information he had concerned misconduct, or an improper state of affairs or circumstances, in relation to TerraCom, within the meaning of ss 1317AA(1)(c), 2(c) and (4) of the Corporations Act.
181. The belief or suspicion pleaded in paragraph 180 was the reason or part of the reason for the conduct pleaded in paragraph 178.

182. By reason of TerraCom's conduct pleaded at paragraphs 178 to 181 above, TerraCom contravened s 1317AC(1) of the Corporations Act:

- (a) on and from 24 February 2020;
- (b) further or alternatively, on and from 12 March 2020;
- (c) further or alternatively, on and from 3 April 2020; and
- (d) further or alternatively, between 24 February 2020 and 3 April 2020.

Contravention of s 1317AC(3) by McCarthy

183. Between 3 February 2020 and 3 April 2020, McCarthy, knew each of the matters pleaded in paragraphs 178 to 181 above.

Particulars

McCarthy's actual knowledge may be inferred. ASIC relies in particular on paragraphs 16-17, 20, 24, 27 to 32, 39 to 41, 59, 68, 70 to 72, 79, 80, 86 to 88, 92, 98 to 101, 104 to 106, 108, 109,113, 115 to 117, 119, 120, 123 to 136, 141, 142, 146, 150, 155 and 161.

184. Between 3 February 2020 and 3 April 2020, McCarthy participated in the contravention by TerraCom pleaded in paragraphs 178 to 181 above by his involvement in the drafting, review and/or approval of any, some or all of:
- (a) the February Announcement as pleaded above at paragraphs 68 and 70 to 72;
 - (b) the Proposed March Announcement and the Open Letter as pleaded above at paragraphs 92, 98 to 101, 104 to 106, 108, 109, 113 and 115 to 117; and
 - (c) the April Announcement as pleaded above at paragraphs 119, 120, 123 to 136, 141 and 142.
185. By reason of the matter pleaded in paragraphs 183 and 184 above, McCarthy was directly or indirectly, knowingly concerned, within the meaning of s 79 of the Corporations Act, in the contraventions by TerraCom of s 1317AC(1) of the Corporations Act alleged at paragraph 182 above.
186. By reason of the matters pleaded in paragraph 185 above, McCarthy contravened s 1317AC(3) of the Corporations Act on each day that TerraCom contravened s 1317AC(1) of the Corporations Act.

Contravention of s 1317AC(3) by Boom

187. Between 3 February 2020 and 3 April 2020, Boom knew each of the matters pleaded in paragraphs 178 to 181 above.

Particulars

Boom's actual knowledge may be inferred. ASIC relies in particular on paragraphs 17, 20, 24, 27 to 31, 39 to 41, 58, 61, 62, 66, 68 to 72, 78 to 80, 86 to 88, 92, 95 to 106, 108, 109,113, 115 to 117, 123, 129 to 136, 141, 142, 146, 150, 155 and 166.

188. Between 3 February 2020 and 3 April 2020, Boom participated in the contravention by TerraCom pleaded in paragraphs 178 to 181 above by his involvement in the drafting, review and/or approval of any, some or all of:
- (a) the February Announcement as pleaded above at paragraphs 61, 62, 66 and 68 to 72;
 - (b) the Proposed March Announcement and the Open Letter as pleaded above at paragraphs 92, 95 to 106, 108, 109,113 and 115 to 117; and
 - (c) the April Announcement as pleaded above at paragraphs 123, 129 to 136, 141 and 142.

189. By reason of the matter pleaded in paragraphs 187 and 188 above, Boom was directly or indirectly, knowingly concerned, within the meaning of s 79 of the Corporations Act, in the contraventions by TerraCom of s 1317AC(1) of the Corporations Act, as alleged at paragraph 182 above.
190. By reason of the matters pleaded in paragraph 189 above, Boom contravened s 1317AC(3) of the Corporations Act on each day that TerraCom contravened s 1317AC(1) of the Corporations Act.

Contravention of s 1317AC(3) by Ransley

191. Between 3 February 2020 and 3 April 2020, Ransley knew each of the matters pleaded in paragraphs 178 to 181 above.

Particulars

Ransley's actual knowledge may be inferred. ASIC relies in particular on paragraphs 20, 24, 34 to 36, 39 to 41, 45, 46, 49, 50, 57, 61, 62, 66, 68 to 72, 79, 87, 91 to 106, 108, 109, 113, 115 to 117, 119, 120, 123 to 136, 141, 142, 146, 150, 155 and 171.

192. Between 3 February 2020 and 3 April 2020, Ransley participated in the contravention by TerraCom pleaded in paragraphs 178 to 181 above by his involvement in the drafting, review and/or approval of any, some or all of:
- (a) the February Announcement as pleaded above at paragraphs 61, 62, 66 and 68 to 72;
 - (b) the Proposed March Announcement and the Open Letter as pleaded above at paragraphs 91 to 106, 108, 109, 113 and 115 to 117; and
 - (c) the April Announcement as pleaded above at paragraphs 119, 120, 123 to 136, 141 and 142.
193. By reason of the matter pleaded in paragraphs 191 and 192 above, Ransley was directly or indirectly, knowingly concerned, within the meaning of s 79 of the Corporations Act, in the contraventions by TerraCom of s 1317AC(1) of the Corporations Act, as alleged at paragraph 182 above.
194. By reason of the matters pleaded in paragraph 193 above, Ransley contravened s 1317AC(3) of the Corporations Act on each day that TerraCom contravened s 1317AC(1) of the Corporations Act.

DISQUALIFICATION ORDERS

Disqualification of McCarthy

195. McCarthy was an officer of TerraCom when TerraCom, on at least two occasions, contravened s 1317AC(1) of the Corporations Act as alleged in paragraph 182 above.
196. On each of the occasions referred to in paragraph 195 above, when TerraCom contravened s 1317AC(1) of the Corporations Act, McCarthy failed to take reasonable steps to prevent the contraventions namely by:
- (a) failing to take the steps pleaded above at paragraph 150, 155 and 161;
 - (b) failing to take reasonable steps to investigate TerraCom's records or make inquiries of Williams to ensure the correctness and completeness of the statements pleaded in paragraph 178; and
 - (c) failing to ensure that each of the February Announcement, Open Letter and April Announcement was amended so that it was not false, misleading or otherwise harmful to Williams in the manner pleaded at paragraph 178.
197. By reason of:
- (a) the contraventions of the Corporations Act committed by TerraCom while McCarthy was an officer of TerraCom;
 - (b) his failure to take reasonable steps to prevent the contraventions;
 - (c) further or alternatively, his contraventions of section 1317AC(3) of the Corporations Act while he was an officer of TerraCom;
 - (d) further or alternatively, his contraventions of sections 1309(2) and 1309(12) of the Corporations Act while he was an officer of TerraCom;

McCarthy should be disqualified pursuant to s 206E of the Corporations Act from managing a corporation for a period that the Court considers appropriate, and such a disqualification is justified.

198. Alternatively, by reason of his contraventions of sections 180(1) and 1309(12) of the Corporations Act as alleged in paragraphs 151, 156 and 162 above, McCarthy should be disqualified pursuant to section 206C of the Corporations Act from managing a corporation for a period that the Court considers appropriate, and such a disqualification is justified.

Disqualification of Boom

199. Boom was an officer of TerraCom when TerraCom, on at least two occasions, contravened s 1317AC(1) of the Corporations Act as alleged in paragraph 182 above.

200. On each of the occasions referred to in paragraph 199 above, when TerraCom contravened s 1317AC(1) of the Corporations Act, Boom failed to take reasonable steps to prevent the contraventions namely by:

- (a) failing to take the steps pleaded above at paragraphs 150, 155 and 166;
- (b) failing to take reasonable steps to investigate TerraCom's records or make inquiries of Williams to ensure the correctness and completeness of the statements pleaded in paragraph 178; and
- (c) failing to ensure that each of the February Announcement, Open Letter and April Announcement was amended so that it was not false, misleading or otherwise harmful to Williams in the manner pleaded at paragraph 178.

201. By reason of:

- (a) the contraventions of the Corporations Act committed by TerraCom while Boom was an officer of TerraCom;
- (b) his failure to take reasonable steps to prevent the contraventions;
- (c) further or alternatively, his contraventions of section 1317AC(3) of the Corporations Act while he was an officer of TerraCom;
- (d) further or alternatively, his contraventions of sections 1309(2) and 1309(12) of the Corporations Act while he was an officer of TerraCom;

Boom should be disqualified pursuant to s 206E of the Corporations Act from managing a corporation for a period that the Court considers appropriate, and such a disqualification is justified.

202. Alternatively, by reason of his contraventions of sections 180(1) and 1309(12) of the Corporations Act as alleged in paragraphs 151, 156 and 167 above, Boom should be disqualified pursuant to section 206C of the Corporations Act from managing a corporation for a period that the Court considers appropriate, and such a disqualification is justified.

Disqualification of Ransley

203. Ransley was a director of TerraCom when TerraCom, on at least two occasions, contravened s 1317AC(1) of the Corporations Act as alleged in paragraph 182 above.

204. On each of the occasions referred to in paragraph 203 above, when TerraCom contravened s 1317AC(1) of the Corporations Act, Ransley failed to take reasonable steps to prevent the contraventions namely by:

- (a) failing to take the steps pleaded above at paragraphs 150, 155 and 171;

- (b) failing to take reasonable steps to investigate TerraCom's records or make inquiries of Williams to ensure the correctness and completeness of the statements pleaded in paragraph 178; and
- (c) failing to ensure that each of the February Announcement, Open Letter and April Announcement was amended so that it was not false, misleading or otherwise harmful to Williams in the manner pleaded at paragraph 178.

205. By reason of:

- (a) the contraventions of the Corporations Act committed by TerraCom while Ransley was an officer of TerraCom;
- (b) his failure to take reasonable steps to prevent the contraventions;
- (c) further or alternatively, his contraventions of section 1317AC(3) of the Corporations Act while he was a director of TerraCom;
- (d) further or alternatively, his contraventions of sections 1309(2) and 1309(12) of the Corporations Act while he was an officer of TerraCom;

Ransley should be disqualified pursuant to s 206E of the Corporations Act from managing a corporation for a period that the Court considers appropriate, and such a disqualification is justified.

206. Alternatively, by reason of his contraventions of sections 180(1) and 1309(12) of the Corporations Act as alleged in paragraphs 151, 156 and 172 above, Ransley should be disqualified pursuant to section 206C of the Corporations Act from managing a corporation for a period that the Court considers appropriate, and such a disqualification is justified.

Disqualification of King

207. By reason of his contraventions of sections 180(1) and 1309(12) of the Corporations Act as alleged in paragraphs 151, 156 and 177 above, King should be disqualified pursuant to section 206C of the Corporations Act from managing a corporation for a period that the Court considers appropriate, and such a disqualification is justified.

Dated: 24 May 2023



.....
Signed by Rebecca Jaffe
Lawyer for the Plaintiff

This pleading was prepared by Yaseen Shariff SC, Nina Moncrief and Matthew Kalyk of counsel

Certificate of lawyer

I Rebecca Jaffe certify to the Court that, in relation to the statement of claim filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Dated: 24 May 2023



.....
Signed by Rebecca Jaffe
Lawyer for the Plaintiff

SCHEDULE

No. NSD 176 of 2023

IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: New South Wales
DIVISION: GENERAL

Second Defendant: DANIEL MCCARTHY
Third Defendant: NATHAN REECE TIMOTHY BOOM
Fourth Defendant: CRAIG ANTHONY RANSLEY
Fifth Defendant: WALLACE MACARTHUR KING

Date: 24 May 2023

SCHEDULE 2

Shipment details		Shipping Analysis Report				Communication		Certificate of Analysis			Final Commercial Invoice	
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
ID ¹	Ship Name and ALS reference	Date	NCV ²	Document ID (Report held by ALS and TerraCom)	Document ID (Report held by ALS)	Date	Document ID	Date	NCV ²	Document ID	Date	Document ID
1.	W P Ocean Emerald - 31015572	9/05/2018	5,406	TER.2004.0015.4256 TER.2004.0015.4257	N/A	9/05/2018 - 10/05/2018	TER.2004.0015.4256 TER.2004.0015.4259	10/05/2018	5,516	ACI.0021.0010.0041	10/05/2018	TER.2001.0003.5534
2.	W P Xin Run - 31015707	28/05/2018	5,599	TER.2004.0015.3011 TER.2004.0015.3012	N/A	28/05/2018	TER.2004.0015.3011 TER.2004.0015.3014	28/05/2018	5,636	ACI.0021.0010.0045	29/05/2018	TER.2001.0003.4191
3.	P Anangel Aspiration - 31015768	12/06/2018	5,478	TER.2004.0015.4210 TER.2004.0015.4211	N/A	12/06/2018	TER.2004.0015.4210	12/06/2018	5,559	ACI.0021.0010.0054	13/06/2018	TER.2001.0003.6560
4.	R W P Medi Matsuura - 31015820	9/07/2018	5,364	TRL.0001.0002.1558 TRL.0001.0002.1559	N/A	9/07/2018	TRL.0001.0002.1558	9/07/2018	5,468	ACI.0021.0010.0062	10/07/2018	TRL.0001.0002.5644
5.	R W P Bagara - 31015824 / 31015842	17/07/2018	5,451	TER.2003.0003.0279 TER.2003.0003.0280	N/A	17/07/2018	TER.2003.0003.0279	17/07/2018	5,526	ACI.0021.0010.0068	18/07/2018	TRL.0001.0002.4033
6.	P St Pinot - 31015914	3/08/2018	5,816 GCV	TRL.0001.0002.5181 TRL.0001.0002.5183	N/A	3/08/2018 - 6/08/2018	TER.2004.0015.1824 TER.2004.0015.4178	6/08/2018	5,648 (5,909 GCV)	ACI.0021.0010.0072	6/08/2018	TER.2001.0003.3073
7.	P Zola - 31015981	10/08/2018	5,519	TRL.0001.0002.5951 TRL.0001.0002.5953	N/A	10/08/2018	TRL.0001.0002.5951	10/08/2018	5,601	ACI.0021.0010.0088	10/08/2018	TER.2001.0003.1720
8.	W P Kinko Maru - 31015956	20/08/2018	5,553	TRL.0001.0002.6291 TRL.0001.0002.6292	N/A	20/08/2018	TRL.0001.0002.6291	21/08/2018	5,643	ACI.0021.0010.0082	3/09/2018	TER.1030.0001.0003
9.	P Shin Sekiyo - 31016117	4/09/2018	5,685	TER.2004.0015.3188 TER.2004.0015.3189	N/A	4/09/2018	TER.2004.0015.1946	4/09/2018	5,722	ACI.0021.0010.0092	10/09/2018	TRL.0001.0002.7271

¹ This column is referred to in the Statement of Claim at 37, 42, 54, 75.

² Net Calorific Value (NCV) NAR kcal/kg unless specified.

Shipment details		Shipping Analysis Report				Communication		Certificate of Analysis			Final Commercial Invoice	
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
ID ¹	Ship Name and ALS reference	Date	NCV ²	Document ID (Report held by ALS and TerraCom)	Document ID (Report held by ALS)	Date	Document ID	Date	NCV ²	Document ID	Date	Document ID
10. W P	Glovis Diamond - 31016499	5/12/2018	5,577	TRL.0001.0003.2458 TRL.0001.0003.2461	N/A	5/12/2018 - 7/12/2018	TRL.0001.0003.2465 TER.2003.0003.0554 TRL.0001.0003.2589 TRL.0001.0003.2590 TRL.0001.0003.2591 TRL.0001.0003.2592 TRL.0001.0003.2593 TRL.0001.0003.2594 TRL.0001.0003.2644 TRL.0001.0003.2646	7/12/2018	5,722	ACI.0021.0010.0115	1/12/2018	TRL.0001.0003.2681
11. W P	Tenryu Maru - 31016648	21/12/2018	5,331	TER.2004.0015.3323 TER.2004.0015.3324	N/A	24/12/2018	TER.2004.0015.4125 TER.2004.0015.4126	24/12/2018	5,452	ACI.0021.0010.0128	24/12/2018	TER.2001.0003.2780
12. W	Anastasia - 31016821	5/02/2019	5,406	TRL.0001.0004.0020 TRL.0001.0004.0023	N/A	5/02/2019	TRL.0001.0004.0020	6/02/2019	5,516	ACI.0021.0010.0138	1/02/2019	TER.2001.0003.2792
13. W	Tatsuki Maru - 59000958	27/02/2019	5,345	TER.2004.0015.3433 TER.2004.0015.3434	N/A	27/02/2019 - 28/02/2019	TER.2003.0003.0572 TER.2003.0003.0573 TRL.0001.0004.4447	28/02/2019	5,458	ACI.0021.0010.0221	28/02/2019	TER.2001.0003.2806
14. W	Glovis Diamond - 31016916	7/03/2019	5,440	TER.2004.0015.2341 TER.2004.0015.2342	N/A	7/03/2019	TER.2004.0015.2348 TER.2004.0015.2819 TER.2004.0015.2821	8/03/2019	5,551	ACI.0021.0010.0148	8/03/2019	TRL.0001.0004.6406
15. W	Shoyoh - 31017012	27/03/2019	5,399	TER.2004.0015.3499 TER.2004.0015.3500	N/A	28/03/2019	TER.2004.0015.4002 TER.2004.0015.4004	29/03/2019	5,454	ACI.0021.0010.0157	1/04/2019	TER.2001.0001.0478
16. W K	Hyundai Samcheonpo - 31017164	8/05/2019	5,398	TER.2004.0015.3581 TER.2004.0015.3583	N/A	N/A	N/A	9/05/2019	5,495	ACI.0021.0010.0172	3/05/2019	TER.2002.0001.3938
17. W P	Twinkle Salute - 31017353	2/07/2019	5,459	TER.2004.0015.3638 TER.2004.0015.3639	N/A	3/07/2019	TER.2004.0015.3640 TER.2004.0015.3641	3/07/2019	5,488	ACI.0021.0010.0176	3/07/2019	TER.2002.0001.4101
18. W	Hakutaka - 59001009	3/07/2019	5,792 GCV	TER.2004.0015.3642 TER.2004.0015.3643	N/A	N/A	N/A	4/07/2019	5,593 (6505 GCV)	ACI.0021.0010.0231	4/07/2019	TER.2002.0001.3670

Shipment details		Shipping Analysis Report				Communication		Certificate of Analysis			Final Commercial Invoice	
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
ID ¹	Ship Name and ALS reference	Date	NCV ²	Document ID (Report held by ALS and TerraCom)	Document ID (Report held by ALS)	Date	Document ID	Date	NCV ²	Document ID	Date	Document ID
19.	N/A Sea Honesty - 31017662	4/09/2019	5,326	N/A	TER.2004.0001.1001	N/A	N/A	6/09/2019	5,411	ACI.0021.0010.0184	6/09/2019	TRL.0001.0008.1937
20.	N/A Graecia Universalis - 31017761	18/09/2019	5,397	N/A	TER.2003.0006.0275	N/A	N/A	19/09/2019	5,412	ACI.0021.0010.0188	20/09/2019	TER.1030.0001.0022
21.	N/A GH Glory - 31017815	11/10/2019	5,407	N/A	TER.2021.0071.3992	N/A	N/A	14/10/2019	5,478	ACI.0021.0010.0192	16/10/20219	TER.1030.0001.0027
22.	N/A Oriental Frontier - 31017922	6/11/2019	5,379	N/A	TER.2021.0071.4010	N/A	N/A	8/11/2019	5,481	ACI.0021.0010.0196	12/11/2019	TER.1030.0001.0032
23.	N/A Sakizaya Leader - 31018046	20/12/2019	5,407	N/A	TER.2021.0071.4046	N/A	N/A	23/12/2019	5,477	ACI.0021.0010.0204	23/12/2019	TER.1025.0001.0045
24.	N/A Nord Hydra - 31018199	6/01/2020	5,422	N/A	TER.2021.0071.4078	N/A	N/A	6/01/2019	5,467	ACI.0021.0010.0212	7/01/2019	TER.1030.0001.0051
25.	N/A Western Dream - 31018247	29/01/2020	5,417	N/A	TER.2021.0071.4097	N/A	N/A	30/01/2020	5,463	ACI.0021.0010.0218	31/01/2020	TRL.0004.0028.8754